Opinion issued March 11, 2010

In The
Court of Appeals
For The
First District of Texas

NO. 01-09-00164-CV

CHARLOTTE DOYLE, AS EXECUTOR OF THE ESTATE OF ALFRED MILLER, DECEASED, Appellant

V.

LETICIA G. HEILMAN, Appellee

On Appeal from Probate Court No. 1
Of Harris County, Texas
Trial Court Cause No. 375,221-401

MEMORANDUM OPINION

Following a bench trial, the court awarded appellee, Leticia G. Heilman, $72,300 in damages on her claim for quantum meruit against Charlotte Doyle, as executor of the estate of Alfred Miller. The court also awarded $16,177.50 in

attorney's fees and additional amounts in the event of an appeal.

On appeal, Doyle contends that the trial court erred by (1) failing to apply Texas Probate Code Section 59A, the statute of frauds, statute of limitations, and laches; (2) applying the equitable principle of quantum meruit to allow for a recovery barred by Probate Code Section 59A; (3) finding the evidence to be legally and factually sufficient to support Heilman's claim for quantum meruit; (4) awarding damages not supported by the evidence; (5) overruling Doyle's *Daubert* challenge to the qualifications of Heilman's expert; and (6) awarding legal fees.

Because we find that Heilman failed to establish a claim for quantum meruit as a matter of law, we sustain Doyle's third issue and need not address the others. We reverse the judgment of the trial court and render judgment that Heilman take nothing.

Background

Albert Miller died on December 14, 2006, survived by his step-daughter, Charlotte Doyle. Miller left a valid, unrevoked, written will bearing his signature signed August 4, 2001. The will left all of his property to his step-daughter, Doyle, and his daughter, Sharon M. Bellamy, who predeceased him in 2004. The will was admitted for probate on October 16, 2007. The court appointed Doyle as independent executrix of the estate, pursuant to the terms of the will. Doyle filed an inventory of Miller's property with the court on December 6, 2007, accounting

for a total estate value of $93,108.97 and no outstanding claims.

On December 17, 2007, Leticia G. Heilman filed an unsecured claim against the estate for "the total amount of the net worth of the entire estate; and alternatively, the value of the personal services performed by Claimant in the approximate sum of $90,000.00." The claim further alleged that Heilman had an oral contract with Miller agreeing that Miller would give "all his worldly goods of value" to Heilman if she cared for his needs until he died. Heilman swore in her claim that she cared for Miller for "over six (6) years, working on average from six (6) to ten (10) hours per day, seven days per week, without compensation."[1]

Doyle, as executor of Miller's estate, rejected the claim on January 14, 2008, and this suit followed. On March 13, 2008, Heilman filed her original petition with the probate court alleging breach of contract, promissory estoppel, quantum meruit, breach of fiduciary duty, spousal liability, and unjust enrichment. The court granted summary judgment in favor of Doyle, disposing of all of Heilman's claims with the exception of quantum meruit.

Heilman proceeded to trial on a claim for quantum meruit, alleging that she orally agreed with Miller in 2002 that he would leave her "all his worldly possessions" upon his death. Her fifth amended petition alleges that Miller "knew or should have known that [Heilman] expected compensation" because he "had

[1] At trial, Heilman testified that she visited Miller on weekdays from 8 a.m. until about 12:30 or 1 p.m.

reasonable notice that [Heilman] expected compensation when [Miller] accepted the services." Specifically, she alleged that Miller "knew that [she] would have to forego other employment opportunities in order to provide the services contemplated."

At trial, Heilman testified that she met Miller in about November 2000 in the parking lot of Kroger's grocery store. Heilman testified that Miller was lost and she helped him to get home. Heilman testified that they talked for a few minutes outside of his home and they exchanged phone numbers. Heilman said that Miller called her later that day when he was lost again. Heilman testified that she saw Miller every day after that. Right after meeting him, they began calling each other on the phone, and Heilman would go with Miller to his doctor appointments. Heilman testified that she began caring for Miller as his caregiver in January 2001. Heilman testified that she would go to Miller's house every morning around 8 a.m. and would leave around 1 p.m. She testified that several times a week, Miller would call her to come back to his house later in the evening. Heilman said that she developed a "bond" with Miller, and there was "true affection" between them. She testified that she "loved Mr. Miller." Robert Mendel, Miller's best friend, testified that Miller was very happy with Heilman, explaining "she gave him love, she gave him—she gave him what he didn't have and he was very happy[.]"

Miller's health deteriorated over the course of the relationship. Heilman

testified that, in the last year of his life, Miller had to wear diapers and had accidents due to his stomach cancer. Towards the end, Miller would sometimes need help in the middle of the night, but Heilman testified that her love for Miller "made it all a little bit easier" to care for him.

She testified that she continuously cared for Miller over six years by preparing breakfast and lunch, grocery shopping with him, cleaning, doing laundry, taking him to doctor appointments, and going with him to visit friends and family. Heilman also assisted him in paying his bills: in the beginning of the relationship, he would write the checks, but later, he would give her money and she would pay the utility bills at the grocery store. Heilman testified that Miller would also write her checks to buy groceries. Miller was able to drive and operate a motor vehicle, up until his stroke shortly before his death. The stroke caused vision problems that left him unable to drive. It was undisputed that Miller was of sound mind and had control of his faculties up until the time of his death.

Heilman testified at trial that she had not been employed since 1994. Heilman said she was never paid by Miller for her services. Heilman testified that, during the time that she knew Miller, he never offered to pay her for her help. She also testified that she never asked Miller to compensate her. When questioned by her attorney on direct examination regarding why she was never paid, she testified, "In 2001 he told me he wanted to never go to a nursing home." Heilman's

testimony regarding the oral agreement consisted of the following exchanges:

> [HEILMAN'S ATTORNEY]: So you say he told you he wanted you to have everything, what was the condition that you would get everything?
>
> [HEILMAN]: For me to continue to help him and care for him.
>
> . . .
>
> [HEILMAN'S ATTORNEY]: Okay. Now, with regard to your compensation, did that subject come up often?
>
> [HEILMAN]: Yes.
>
> [HEILMAN'S ATTORNEY]: And did he always say the same thing?
>
> [HEILMAN]: Yes, he did.
>
> [HEILMAN'S ATTORNEY]: And that was again? What would he say?
>
> [HEILMAN]: He said you are the only one that really cares about me and everything that I have will go to you.
>
> [HEILMAN'S ATTORNEY]: And did he inform you of his assets, what he owned?
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> [HEILMAN]: No.
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> [HEILMAN'S ATTORNEY]: Well, you knew he owned the house, right?
>
> [HEILMAN]: Yes.
>
> [HEILMAN'S ATTORNEY]: And you didn't know about anything else that he had?
>
> [HEILMAN]: No.

Both Heilman's original unsecured claim filed with the estate and her original petition allege that she cared for Miller for six years or longer and requested compensation for that service beginning in 2000. However, her allegations changed throughout the pendency of the case. In her fifth amended petition, she claimed she was owed compensation for her services beginning in August 2001, despite the factual claim in the same petition that she entered into an oral agreement with Miller in early 2002. In her affidavit filed as summary judgment proof, Heilman stated under oath the oral agreement occurred in early 2002. In a response to an interrogatory, Heilman claimed the oral agreement occurred in March 2002. But, during trial, she testified that it was actually in 2001. At trial when she was asked about the "agreement that [she] made with [Miller] in March of 2002," she continuously corrected trial counsel that it was actually 2001. Thus, Heilman's trial testimony was that the oral agreement to leave Heilman "all of his worldly possessions" occurred in March 2001. Miller, however, had a valid will signed August 4, 2001, leaving all of his property to his daughters and making no mention of Heilman.

Heilman called Robert Mendel, who testified that he was Miller's best friend. Heilman testified Mendel could corroborate her testimony regarding the oral agreement with Miller. The record, however, reveals the following testimony from Mendel:

[DOYLE'S ATTORNEY]: [W]hat was your understanding of the agreement Mr. Miller made with Ellie, Mrs. Heilman, to pay for her services?

[MENDEL]: I don't know that.

[DOYLE'S ATTORNEY]: You don't know of any agreement?

[MENDEL]: No.

[DOYLE'S ATTORNEY]: Was it your understanding he said something to you about leaving his entire estate to Mrs. Heilman?

[MENDEL]: He did make that remark, yes, sir.

Mendel testified that Miller "[n]ever discussed finances" so he was unaware of any annuities or assisted care insurance that Miller bought. Additionally, Mendel testified that Miller never told him he already had a will.

Heilman admitted she had no documentation of her agreement with Miller. She also admitted that she never counted or documented the time she spent caring for Miller. She claims if she had charged an hourly wage for her services, she would have charged about $12 an hour. Heilman admitted she had no special training beyond a high school diploma and was not certified or licensed in any profession.

Heilman testified that she knew Miller already had a will and that, on the day Miller passed away, they had made plans to go before a notary for Miller to make a new will. Heilman admitted that she was the only person who spoke with the notary, and Miller did not. Heilman said that Mendel was planning to meet

them that day to witness the signing. When Heilman realized Miller had died, she called Mendel but did not call his step-daughter, Doyle. Heilman admitted that she had Doyle's number. Heilman testified that Miller had been talking about going to get a new will for about a year prior to his death.

Heilman initially alleged she never received any type of compensation or anything of value from Miller. Later, Heilman admitted that she received two automobiles from Miller but insisted she paid $2,000 in cash for one of the automobiles. She said she had no record to support that she paid for the vehicle. Tax and title forms signed by both Miller and Heilman showed both vehicles as gifts. Additionally, the form for the vehicle Heilman claimed she purchased from Miller listed the price paid for the vehicle as $0. The second vehicle, a 2002 Blazer, was transferred to her by Miller in April of 2006 after Miller had a stroke and was unable to drive.

Heilman testified that, after Miller's death, she went back to his house "[t]o pick up [her] things that [she] had there." Heilman testified that Miller had saw sharpening and welding equipment that ended up in the possession of Mr. Mendel's brother-in-law. She said she was unaware whether Miller was paid for the property.

Heilman presented an expert witness, Mr. Shelby Clark, to testify to the value of her services. Clark's curriculum vitae showed a bachelor's degree in

Architecture from the Rhode Island School of Design and an MBA from the University of Texas. Clark had experience in the building and telecommunications industries. Clark's experience with the caregiving field started in December 2004 when he became the manager of Comfort Keepers. Clark said he "guessed" as to the value of Heilman's services based on the amount of time she reported to him, which she admitted she never recorded. Clark's figure was based on services beginning in 2000.

Doyle presented an expert, Toni Oville, that said the industry standard in the caregiving industry was to keep records of your time. Because Heilman did not keep records of her time, Oville's opinion was that there was no way to determine the correct amount to compensate her.

Doyle testified at trial that throughout her life she referred to Miller as "[D]addy" and he referred to her as his "daughter," even though she was his step-daughter. Doyle testified that Miller spoke of Heilman often, but never stated that he intended to leave everything to her. Miller also never told Doyle that he intended to leave his estate to Heilman in exchange for services she rendered. Doyle testified that Heilman brought Miller over to her house several times and she also saw the two together grocery shopping. Doyle said that she did not have a bad relationship with Heilman. Heilman spoke with Doyle on several occasions but never informed Doyle that she was seeking compensation for her services. The

first time Doyle became aware of Heilman's claim was when she filed the claim against the estate.

Doyle testified that she found out about her father's death from a message Mendel left on her voicemail. When Doyle arrived at Miller's home on the day of his death, Mendel and Heilman informed her that her father wanted Heilman to have everything. They also mentioned that Miller wanted Heilman to have an annuity, despite Miller's designation of Doyle as the beneficiary. Doyle testified that Miller had the ability to change the beneficiary but never did. Additionally, Doyle testified that her father had insurance to pay for care if something happened to him and he was unable to care for himself. Doyle testified that after her mother (Miller's wife) was placed in a nursing home and Miller realized the expense involved, Miller met with an insurance agent to restructure his finances to make sure he was secure and his estate would not be depleted. Miller purchased two prepaid annuities and an insurance policy for himself covering assisted living and nursing home expenses.

The evidence presented at trial revealed that Miller owned his home, free and clear, and had an annuity which paid $1,000 per month. Heilman testified that this money was used to pay for groceries and bills, but eventually ran out, at which point she called Doyle. Heilman told Doyle that Miller received a letter saying "he was not going to get the money anymore." Doyle informed Heilman that if Miller

was uncomfortable not having that money that Heilman could take him to the bank to withdraw $1,000 a month. Heilman testified that she would take Miller to the bank to cash his $1,000 check or withdraw money. There were no records presented at trial showing how Miller's money was spent each month.

After a bench trial, the trial court entered a judgment in favor of Heilman on her claim for quantum meruit, awarding $72,300 in damages and $16,177.50 in attorney's fees.

Discussion

On appeal, Doyle contends that Section 59A of the Texas Probate Code is an absolute bar on Heilman's recovery. Specifically, Doyle asserts that Section 59A bars recovery for quantum meruit.

Section 59A provides: "A contract to make a will or devise . . . can be established only by: (1) provisions of a written agreement that is binding and enforceable; or (2) provisions of a will stating that a contract does exist and stating the material provisions of the contract." TEX. PROB. CODE ANN. § 59A (Vernon 2003). Heilman admits she has no written agreement and she is not named in Miller's will, so it is clear she cannot meet this standard to establish the existence of a contract. However, Heilman argued that she should recover under quantum meruit for the reasonable value of her services, and the trial court entered judgment in her favor.

Quantum meruit is an equitable remedy that does not arise out of a contract, but is independent of it. *Vortt Exploration Co. v. Chevron U.S.A., Inc.*, 787 S.W.2d 942, 944 (Tex. 1990). Generally, a party may recover under quantum meruit only when there is no valid express contract covering the services or materials furnished. *Id.*; *see also Woodard v. Sw. States, Inc.*, 384 S.W.2d 674, 675 (Tex. 1964) ("Where there exists a valid express contract covering the subject matter, there can be no implied contract."). The San Antonio Court of Appeals addressed a claim for unjust enrichment and a Section 59A defense but did not reach the issue because the claimant sought a recovery based on a contract, which Section 59A precludes if it is not in writing. *See In re Estate of Wallace*, No. 04-05-00567-CV, 2006 WL 3611277 (Tex. App.—San Antonio 2006, no pet.) (mem. op.). We find no authority establishing that a claimant can recover on a claim for quantum meruit for an alleged oral agreement that is barred by Section 59A. We too need not decide whether Section 59A bars a quantum meruit claim; even if we assume recovery under quantum meruit is permissible against the estate of a decedent who received services, Heilman cannot recover as a matter of law.

Quantum meruit is an equitable theory of recovery founded in the principle of unjust enrichment. *Vortt Exploration Co. v. Chevron U.S.A., Inc.*, 787 S.W.2d 942, 944 (Tex. 1990). "To recover under the doctrine of quantum meruit, a plaintiff must establish that: 1) valuable services and/or materials were furnished,

2) to the party sought to be charged, 3) which were accepted by the party sought to be charged, and 4) under such circumstances as reasonably notified the recipient that the plaintiff, in performing, expected to be paid by the recipient." *Heldenfels Bros. v. City of Corpus Christi*, 832 S.W.2d 39, 41 (Tex. 1992); *Vortt Exploration Co.*, 787 S.W.2d at 944; *Speck v. First Evangelical Lutheran Church of Houston*, 235 S.W.3d 811, 815 (Tex. App.—Houston [1st Dist.] 2007, no pet.).

Doyle argues that Heilman failed to satisfy her burden of establishing the elements of quantum meruit. Specifically, Doyle argues that the evidence is legally and factually insufficient to establish that Heilman's services were rendered under circumstances that reasonably notified Miller that she expected to be paid.

In addressing a similar issue, the Corpus Christi Court of Appeals held that evidence of a decedent's stated desire that he wished to compensate caregivers by remembering them in his will was no evidence that decedent was "reasonably notified" that the caregivers expected him to compensate them for caring for him during his last years. *Herbst v. Sheppard*, 995 S.W.2d 310, 315 (Tex. App.—Corpus Christi 1999, pet. denied). Without evidence that the decedent was aware that the caregivers "expected" compensation for their services, they cannot recover in quantum meruit. *Id.* (citing *Heldenfels Bros.*, 832 S.W.2d at 41).

In the present case, Heilman unequivocally testified that Miller never offered to pay her for her services and she never asked Miller to compensate her. Heilman

testified that they had a relationship based on mutual affection and she loved Miller. While Heilman's testimony is inconsistent as to the exact date she made an oral agreement with Miller, in all the factual variations it is clear that she was caring for Miller on a daily basis before there was an alleged oral agreement. Even if taken as true, Heilman's testimony shows that at some point *after* voluntarily caring for Miller on a daily basis, Miller said he would provide for Heilman in his will. Her testimony provides no evidence that she relied on the statement to her detriment. Rather, her testimony is that she continued caring for Miller, as she had been doing voluntarily. Because she cared for Miller for months without compensation before Miller mentioned including her in his will, the circumstances could not have reasonably notified Miller she sought compensation. She admitted that she never asked Miller for compensation. While she claims in her live petition that Miller had reasonable notice that she expected to be compensated because he "knew that [she] would have to forego other employment opportunities in order to provide the services contemplated," Heilman testified at trial that she was a "housewife" and had not been employed since 1994. Thus, there is no evidence that Heilman relied on Miller's statement and forewent other job opportunities; because she did not change her position, the circumstances could not have put Miller on reasonable notice that she expected to be compensated. *See Herbst*, 995 S.W.2d at 315. "A person who has conferred a benefit upon another, manifesting

that he does not expect compensation therefor, is not entitled to restitution merely because his expectation that the other will make a gift to him or enter into a contract with him is not realized." *Peko Oil USA v. Evans*, 800 S.W.2d 572, 577 (Tex. App.—Dallas 1990, writ denied) (quoting RESTATEMENT OF RESTITUTION § 57 (1937)). "It is elementary in the law governing quantum meruit recovery for work and labor that no recovery may be had for services performed, without thought of direct cash compensation[.]" *Id.* (citing *Maple Island Farm v. Bitterling*, 209 F.2d 867, 871-72 (8th Cir.1954)).

Further, Mendel does not corroborate Heilman's testimony regarding an agreement. To the contrary, Mendel testified he was unaware of any agreement between Miller and Heilman to compensate Heilman for her services. Mendel's only corroborating testimony was that Miller had mentioned including Heilman in his will.

Accordingly, we hold that Heilman has failed to establish her entitlement to recovery on a claim of quantum meruit as a matter of law. *See Herbst*, 995 S.W.2d at 315. Therefore, the trial court erred in rendering judgment for Heilman on her claim.

We sustain Doyle's legal sufficiency challenge. Because the issue is dispositive, we need not address Doyle's other issues on appeal.

Conclusion

We reverse the judgment of the trial court and render judgment that Heilman take nothing.

George C. Hanks
Justice

Panel consists of Justices Jennings, Hanks, and Bland.