COURT OF APPEALS
DECISION
DATED AND RELEASED

June 3, 1997

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

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No. 96-2785

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

IN RE THE ESTATE OF STURE JOHNSON:
PRISCILLA LARSON,

PETITIONER-RESPONDENT-CROSS APPELLANT,

V.

THE ESTATE OF STURE A. JOHNSON,

RESPONDENT-APPELLANT-CROSS RESPONDENT.

APPEAL and CROSS-APPEAL from a judgment of the circuit court for Washburn County: WARREN E. WINTON, Judge. *Affirmed.*

Before Cane, P.J., Myse and Fox, JJ.

FOX, J. Marie Larson, personal representative of the Estate of Sture Johnson, appeals a trial court award of $99,000 to Priscilla Larson on her

claim for personal services rendered to Johnson before his death. The estate claims that the trial court erred in the following respects: (1) The trial court's finding of an implied contract for compensation for personal services is not supported by the evidence; (2) the court's finding that the reasonable value of services was $99,000 is not supported by the evidence; (3) the court erred by applying a six-year statute of limitations; and (4) the court erred when it awarded an amount in excess of that sought in Larson's written claim. Larson cross-appeals the trial court's determination that the reasonable value of her personal services was $99,000. Larson claims that the evidence establishes that the value of those services was $115,440.

We conclude that the record supports the trial court's finding of an implied contract for payment for personal services and its determination of the reasonable value of those services. We also conclude that the court applied the proper statute of limitations and that it could properly award an amount greater than that sought in the written complaint.

Johnson and Larson first met in the early 1970s when Larson lived in Chicago. The two cohabited continuously in Johnson's home in Washburn County from 1984 until a few weeks before his death in 1994 when Larson left temporarily to care for her daughter who was ill.

Although Johnson was capable of caring for himself, and did so before Larson moved in, during the entire time the two lived together Larson performed all household chores. The services she provided included housekeeping, cooking, shopping and laundry. In later years, Johnson's health began to fail. Larson took personal care of him, overseeing his medications and arranging for and transporting him to doctor appointments.

Larson acknowledged at trial that her relationship with Johnson was based upon their mutual affection and not upon any express employment contract. She testified, however, that she expected to be compensated for her services upon Johnson's death above and beyond the value of the room and board he provided during the years they lived together. There was evidence that Johnson had told her that he planned to leave her his home and that he had, on multiple occasions, made statements in her presence to a family friend that he intended to make a will leaving everything to Larson because she had taken care of him and provided for his needs.

When Johnson died he left a will, executed in 1970, which left his entire estate to his ex-wife or other distant relatives. Larson brought this claim against the estate, requesting damages for "personal services [performed] for decedent in excess of past three years." The amount of the claim was specified as "$20,000.00 or such other amount as determined by the court for personal services." At trial, Larson testified that she sought $20,000 plus the value of Johnson's home, valued at $79,000, for a total of $99,000.

Larson also presented the testimony of an expert witness, Beverly Gehrke, an employee of the Department of Industry, Labor & Human Relations, Bureau of Work Force Information, concerning the market value of the services Larson provided. Gehrke opined that the reasonable value of those services, taking into account the appropriate minimum wage and the fact that Johnson provided food and lodging to Larson throughout their cohabitation, was $390 per week.

Following a trial to the court, the court found that Larson had not established the existence of an express contract for payment for personal services.

The court found, however, that Larson had performed services for Johnson at his special instance and request and that Larson had a reasonable expectation of compensation. Upon those findings, the court concluded that Larson had proven existence of an implied contract for payment and was entitled to compensation for the reasonable value of those services. Making allowances for periods during which Larson provided no services to Johnson, the court found the reasonable value of those services to be $390 per week, for a total of $115,440. The court determined that Larson's claim for $99,000 was reasonable and awarded that amount.

While the trial court recognized that claims for personal services are ordinarily subject to a two-year statute of limitations,[1] the court found that in this case compensation was not to be paid until after Johnson's death. The court concluded that under such circumstances, Larson's claim was governed by a six-year statute of limitations.

The estate argued that any award compensating Larson for personal services should be limited to the $20,000 recited in the written claim filed with the estate. The trial court disagreed, determining that the additional language of the claim "or such other amount as determined by the court for personal services" entitled Larson to reasonable compensation for all services rendered, regardless the amount recited in the written claim.

The estate first challenges the trial court's finding of an implied contract for payment for personal services. Whether an implied contract exists is a

[1] Section 893.44(1), STATS., provides, in pertinent part: "Any action to recover unpaid salary, wages or other compensation for personal services ... shall be commenced within 2 years after the cause of action accrues or be barred."

question of fact. *See* ***Theuerkauf v. Sutton***, 102 Wis.2d 176, 183, 306 N.W.2d 651, 657 (1981). We will uphold a trial court's findings of fact unless they are clearly erroneous. Section 805.17(2), STATS. The trial court's finding of an implied contract in this case is not clearly erroneous.

Our supreme court in ***In re Estate of Steffes***, 95 Wis.2d 490, 497, 290 N.W.2d 697, 701 (1980), observed:

> [T]his court, in a long line of cases, has held that where services are performed at the special instance of the deceased and with his knowledge and are performed by the claimant with expectation of reasonable compensation, recovery may be allowed on the basis of a contract to pay, implied in fact or law.

The estate contends that neither of the trial courts' findings here, that the services were performed at the special instance of the decedent and that they were performed by Larson with expectation of compensation, are supported by the evidence adduced at trial.

The estate first argues that the record is devoid of evidence that Johnson "insisted" Larson perform housekeeping and other personal services on his behalf. The estate asserts that the evidence establishes that Larson performed such services, not at Johnson's insistence, but gratuitously. The estate mistakenly argues that ***Steffes*** requires proof that such services be performed at the decedent's "insistence." In fact, ***Steffes*** merely requires that the services be performed at the special instance, or request, of the decedent. ***Id.*** at 497, 290 N.W.2d at 700-01.

The trial court, noting that Larson left her home and extended family in Chicago to move to northern Wisconsin to Johnson's home and performed a panoply of personal and nursing services throughout their years together with

Johnson's full knowledge, found that the services were performed at the special instance of the decedent. That finding is reasonable and is not clearly erroneous.

The estate next argues that Larson had no reasonable expectation of compensation for her services. The trial court determined, notwithstanding the evidence of love and affection that existed between Larson and Johnson, that Larson had not performed the services gratuitously but, rather, expected that she would be reasonably compensated following the decedent's death. The trial court took note of Johnson's statements that he intended to provide for Larson after his death in recognition of the services and care she had provided him during his life. Although the same evidence may support a finding that Larson rendered the services gratuitously, the trial court's finding to the contrary is reasonable and is not clearly erroneous. Accepting these findings, we conclude that the trial court properly found the existence of an implied contract for personal services pursuant to ***Steffes***, 95 Wis.2d at 497, 290 N.W.2d at 701.

The estate next contends that there is insufficient evidence to support the trial court's determination of the reasonable value of Larson's services. We will uphold the court's determination unless it is clearly erroneous. Section 805.17(2), STATS.

The estate argues that the trial court erred by accepting Gehrke's testimony that the reasonable value of the services was $390 per week in light of the fact that her opinions were based upon the minimum wage in effect only during the last two years of the applicable time period and because Gehrke had no personal knowledge of the nature of Larson's services. The trial court found Gehrke's testimony to be the most credible and entitled to the greatest weight. Credibility of witnesses and the weight to be accorded their testimony are matters

for determination by the finder of fact. ***Greenwald v. Greenwald***, 154 Wis.2d 767, 781, 454 N.W.2d 34, 39 (Ct. App. 1990). The factors upon which Gehrke based her opinion were matters of weight for the trial court to consider in determining the persuasive value of the opinion. The trial court was not required to reject Gehrke's conclusions merely because a different, lower minimum wage was in effect during part of the period of time covered by her opinion.

Likewise, the fact that Gehrke's opinion was not based upon her personal knowledge of the exact nature of the services or the exact number of hours per week Larson spent performing them did not require the trial court to disregard her opinion. The trial court, in fact, while noting the credibility and weight it attached to Gehrke's testimony, determined the reasonable value of Larson's services to be $99,000, an amount lower than the $115,440 recommended by Gehrke. The trial court was entitled to consider Gehrke's testimony, together with the other evidence before it, in arriving at its determination of the reasonable value of the services rendered. Considering Larson's testimony that she believed the value of her services to be $20,000 plus the value of the house, the trial court's determination that the reasonable value of those services was $99,000 is not clearly erroneous. *See* § 805.17(2), STATS.

It is the trial court's downward departure from Gehrke's $115,440 figure that forms the basis for Larson's cross-appeal. She argues that the trial court, having found Gehrke's testimony to be credible, was required to adopt that figure as the reasonable value of the services. We disagree. As noted above, we conclude that the trial court's determination is reasonable and not clearly erroneous given the evidence before the court.

The estate next asserts that the trial court incorrectly applied a six-year statute of limitations to this case. We will accept the facts found by the trial court unless they are clearly erroneous. Section 805.17(2), STATS. Given those facts, the applicability of a statute of limitations is a question of law that we review de novo. ***Shanak v. City of Waupaca***, 185 Wis.2d 568, 581, 518 N.W.2d 310, 316 (Ct. App. 1994).

Ordinarily, the statute of limitations applicable to a claim for compensation for personal services is two years. Section 893.44, STATS. Where, however, the evidence establishes that the claimant was not entitled to compensation during the decedent's lifetime but, rather, upon his death, the applicable statute of limitations is six years. ***In re Estate of Nale***, 61 Wis.2d 654, 660-61, 213 N.W.2d 552, 556 (1974), citing ***Estate of Schaefer***, 261 Wis. 431, 53 N.W.2d 427 (1952); ***Estate of Gerke***, 271 Wis. 297, 73 N.W.2d 506 (1955).

Here, the court found that payment was not intended until Johnson's death. The court based this finding upon Larson's conduct as well as on Johnson's statements that he intended to leave Larson his home or other assets after his death. That factual determination is not clearly erroneous. Given this factual determination, we conclude that the applicable statute of limitations is six years.

Finally, the estate contends that the trial court improperly allowed Larson to amend her claim after the statutory time for amending claims had passed. *See* § 859.13, STATS. The estate contends Larson should be limited to a maximum recovery on her claim of $20,000. This presents a question of law that we review de novo.

The written claim sought not only $20,000, but also "such other amount as determined by the court for personal services." We conclude that this

language gave adequate notice to the estate that Larson was claiming something in addition to $20,000 and implied that evidence of the specific services performed and their value would be presented to the court. This additional evidence does not constitute an amendment of Larson's written claim, but to the contrary is consistent with the written claim. The estate cites no authority for its assertions, and we will not address them further.

We conclude that the trial court's findings of fact were supported by the evidentiary record, that the court applied the correct statute of limitations, and that the court could properly award an amount in excess of $20,000. We therefore affirm the judgment of the trial court in its entirety.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.