IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
February 12, 2008 Session

SAMUEL DEAN WILLIAMS v. RUSSELL W. COFFEY

Direct Appeal from the Chancery Court for Sullivan County
No. K0033611(L) Hon. E.G. Moody, Judge

No. E2007-01476-COA-R3-CV - FILED APRIL 21, 2008

This case involves a dispute over the improvements made to defendant's land by plaintiff, which alleged that defendant had agreed to sell the land on which the improvements were made. The Trial Court found an implied contract between the parties and awarded plaintiff damages. On appeal, we hold that the Trial Court employed the wrong measure of damages, vacate the damage award and remand for determination of damages under quantum meruit.

Tenn. R. App. P.3 Appeal as of Right; Judgment of the Chancery Court Affirmed in Part and Vacated in Part.

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the Court, in which D. MICHAEL SWINEY, J., and SHARON G. LEE, J., joined.

Thomas A. Peters, Kingsport, Tennessee, for appellant.

James H. Beeler, Kingsport, Tennessee, for appellee.

OPINION

This dispute involves improvements plaintiff made to real property owned by the defendant, wherein plaintiff alleged he had an agreement with defendant whereby defendant

would sell a part of the improved property to plaintiff for the sum of $4,000.00 once plaintiff obtained a loan.

The Complaint alleged that plaintiff and defendant, who owned adjacent pieces of property, had an agreement whereby defendant would sell a parcel of the land to plaintiff for $4,000.00. Plaintiff contended that defendant agreed that he could begin to clear the property of trees and brush, grade the property and seed it prior to the sale of the property, and that after he had done the work and obtained the loan, defendant refused to sell the property as planned. Defendant Answered, denying that there was ever any agreement between the parties to convey the property, and that plaintiff's actions were done without his permission and that his property had been damaged as a result of plaintiff's activities.

The case was tried before the Chancellor on February 6, 2007, and the Trial Court made the following findings of fact:

1. Mr. Williams testified that he had cleared trees and brush on a piece of Mr. Coffey's property because Mr. Coffey had promised Mr. Williams he would sell him that piece of property.

2. Mr. Coffey denied that he had promised that he would sell the lot to Mr. Williams but Mr. Coffey admitted giving permission to Mr. Williams to clear the lot and that the removal of the trees and brush had improved the appearance of the lot.

3. Mr. Williams testified that he removed thirty to forty trees, nineteen of which were large, from the lot and that he buried the brush and tree stumps. Mr. Williams stated that he put approximately two hundred hours of backhoe work into the job and that he had hired some help for the job and had paid for the grass seed and straw he used to re-seed the lot.

4. The parties disagreed about the amount and value of the work performed by Mr. Williams. There was also a dispute between the parties about the value of the backhoe work as Mr. Williams was learning to use the backhoe while performing the job.

5. The parties stipulated to the qualifications of Henry Bailey, a state certified appraiser. Mr. Bailey's revised appraisal, which he filed after the trial, established that Mr. Williams' work on the property had increased the market value of the property by $4,800.00.[1] Mr. Coffey did not present any evidence regarding a change in value of the property as a result of Mr. Williams' work.

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[1] At trial Mr. Bailey testified that the market value of the property had increased by $8,000.00. However he had not considered a TVA easement that ran through the property. The revised assessment of an increase in market value of $4,800.00 was made subject to the easement.

6. Mr. Coffey presented David Hall, an experienced backhoe operator, who testified that the backhoe work performed by Mr. Williams should have been accomplished in no more than thirty hours and cost $50.00 an hour.

7. Mr. Coffey acquiesced in Mr. Williams making the improvements to his lot over a period of six to eight months.

The evidence does not preponderate against the findings of facts. Tenn. R. App. P. 13(d).

The Chancellor made the following conclusions of law:

1. The parties did not have an express contract but they did have an implied contract. The proper measure of damage is quantum meruit.

2. Damages to real estate are generally measured by the fair market value of the land immediately prior to the loss, less the fair market value immediately after the loss.[2]

3. Henry Bailey's testimony that the property's fair market value had increased by $4,800.00 as a result of Mr. Williams' work was well taken as Mr. Bailey was qualified and credible. However, based on photographs entered into evidence, the Court found that Mr. Williams had benefitted from some of the work he performed on Mr. Coffey's property, such as the removal of some of the trees and brush and the grade work done to or near his driveway. The Court valued the benefits received by Mr. Williams as $800.00.

4. The Court awarded Mr. Williams damages of $4,000.00 and taxed Mr. Coffey with the costs of the cause.

Plaintiff filed a motion for discretionary costs of $823.00, which included the appraiser's fees, court reporter's fees and mediation fees. The motion was granted in part and the Chancellor excluded the request for mediation fees and awarded $593.00 for expert fees and court reporter fees. Defendant filed a Motion to Alter or Amend, stating:

> Defendant respectfully submits that the Court did not address the following [presumably in its opinion]:
>
> a.. The replacement of iron pin survey markers on the property line between Plaintiff's and Defendant's properties which were removed by Plaintiff.

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[2] Here the issue was fair market value before and after the property was improved rather than damaged.

b. Defendant's white picket fence which was removed by Plaintiff.
c. The gravel placed by Plaintiff upon Defendant's property upon which Plaintiff has been parking his vehicles.
d. Removal of top soil by Plaintiff from Defendant's property and placed upon Plaintiff's property.
e. Remaining brush and debris Plaintiff left on Defendant's property and did not bury.

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The Chancellor denied this Motion, stating that he had considered all of the issues raised by defendant at trial. The issues raised on appeal are:

A. Did the Trial Court err in finding that plaintiff was entitled to a quantum meruit award of $4,000.00?

B. Did the Trial Court err in not addressing the issues raised by defendant, including the removal of the surveyor's markers, the picket fence and the topsoil; the placement of gravel on defendant's property by plaintiff and; plaintiff's failure to remove all of brush and debris from defendant's property?

C. Whether this appeal is frivolous pursuant to Tennessee Code Annotated § 27-1-122 and whether plaintiff should be awarded attorney's fees and costs associated with this appeal?

In matters tried by a judge sitting without a jury, we review a trial court's findings of fact *de novo* upon the record, accompanied by a presumption of correctness. Tenn. R. App. P. 13(d). The findings of fact will be affirmed unless contradicted by a preponderance of the evidence. *Wright v. City of Knoxville,* 898 S.W.2d 177, 181 (Tenn.1995). As the trial judge in a non-jury case is in the best position to assess the credibility of the witnesses who have testified at trial, this Court gives great weight to the trial court's determination of the witnesses credibility. *Randolph v. Randolph,* 937 S.W.2d 815, 819 (Tenn. 1996), *Estate of Walton v. Young*, 950 S.W. 2d 956, 959 (Tenn. 1997). The scope of review for questions of law is *de novo* upon the record of the trial court with no presumption of correctness. *Union Carbide Corp. v. Huddleston,* 854 S.W.2d 87, 91 (Tenn.1993); *Bowden v. Ward,* 27 S.W.3d 913, 916 (Tenn.2000). A trial court's ruling on a motion to alter or amend may be reversed on appeal only upon a showing of abuse of discretion. *Stovall v. Clarke,* 113 S.W.3d 715, 721 (Tenn.2003)

The Trial Court held the parties did not have an express contract regarding the sale of the property at issue but that there was an implied contract. This holding was not appealed by either party. Defendant appealed the Trial Court's award of $4,000.00, based upon quantum meruit.

A contract can be express, implied, written, or oral, "but an enforceable contract must result from a meeting of the minds in mutual assent to terms, must be based upon sufficient consideration, must be free from fraud or undue influence, not against public policy and must be sufficiently definite to be enforced." *Ferguson v. Nationwide Property & Cas. Ins. Co.* 218 S.W.3d 42, 49 (Tenn. Ct. App. 2006).

Under Tennessee law there are two distinct types of implied contracts: contracts implied in fact and contracts implied in law, which are often referred to as quasi contracts. A contract implied in fact arises under circumstances which show mutual intent of assent to contract, consideration and lawful purpose. Mutual assent may be shown by the conduct of the parties and the surrounding circumstances. *Thompson v. Hensley,* 136 S.W.3d 925, 929-30 (Tenn. Ct. App. 2003). In contrast to a contract implied in fact, "contracts implied in law are created by law without the assent of the party bound, on the basis that they are dictated by reason and justice." *Ferguson,* at p.50. The Supreme Court has established that a party seeking to recover on an implied contract in law or quasi contract theory must prove the following elements: (1) there is no existing, enforceable contract between the parties covering the same subject matter; (2) the party seeking recovery proves that it provided valuable goods or services; (3) the party to be charged received the goods or services; (4) the circumstances indicate that the parties to the transaction should have reasonably understood that the person providing the goods or services expected to be compensated and; (5) the circumstances demonstrate that it would be unjust for a party to retain the goods or services without payment. *Doe v. HCA Health Services of Tenn., Inc.,* 46 S.W.3d 191, 197-98 (Tenn.2001).

The most cogent factor for consideration regarding recovery under a quasi contract is unjust enrichment of the parties. *Paschall's, Inc., v. Dozier,* 407 S.W.2d 150, 154 (Tenn. 1966). A quantum meruit recovery is limited to the actual value of the goods and services received by the defendant. *Castelli v. Lien,* 910 S.W. 2d 420, 427 (Tenn. Ct. App. 1995). The reasonable value of services should be based on the customs and practices prevailing in the same sort of business in which the services would normally be provided. *Chisholm v. Western Reserves Oil Co.,* 655 F.2d 94, 96 (6th Cir.1981). To prove the reasonable value of the goods and services, the party seeking to recover in quantum meruit can explain the method used to arrive at the fee or offer proof from other professionals in the same business or trade. *Nations Rent of Tenn., Inc. v. Lange,* Nos. M2001-02368-COA-R3-CV, M2001-02360-COA-R3-CV, M2001-02366-COA-R3-CV, 2002 WL 31467882 at * 2 (Tenn. Ct. App. Nov. 6, 2002); *Castelli,* 910 S.W.2d at 428. In this case the Trial Court did not state whether it found an implied contract in fact or an implied contract in law. These findings demonstrate that there was not a showing of mutual intent of assent to contract necessary to find an implied contract in fact. Thus, the Trial Court's findings establish an implied contract in law or quasi contract. The five relevant elements necessary to find an implied contract in law were found to be present by the Trial Court, i.e., there was no agreement between the parties that would constitute an existing enforceable contract, and plaintiff provided the services of cutting trees and clearing brush to defendant. Defendant received the services, and was aware of the work as it was carried out by plaintiff, and he should have known that plaintiff would have expected some compensation for the work. Finally, the Court found defendant would be unjustly enriched by defendant's efforts if he were to retain the benefits of the work without payment.

On this theory, the case law is clear that a quantum meruit recovery must be the reasonable value of the material and labor furnished. *Weather Doctor Services Co., Inc. v. Stephens,* No. E2000-01427-COA-R3-CV, 2001 WL 849540 at * 2 (Tenn. Ct. App. Jul. 27, 2001). The Trial Court erred in basing the plaintiff's recovery on the increased value of defendant's property. The Court reasoned "Damages to real estate are generally measured by the

fair market value of the land immediately prior to the loss, less the fair market value immediately after the loss". With due deference to the Trial Court, this reasoning is flawed as the property at issue was not damaged, but rather it was possibly improved by plaintiff's services. Accordingly, the Trial Court erred in basing its award to plaintiff on any increase in the market value of defendant's property, when the proper award, if any, would be providing a quantum meruit award based upon the reasonable value of plaintiff's services. Due to the widely diverse opinions as to the estimation of the value of plaintiff's services to defendant and no finding by the Trial Court, we vacate the award and remand for the Trial Court to hear additional evidence as to the reasonable value of plaintiff's services to defendant. *See* Tenn. Code Ann. § 27-3-128.

On appeal, defendant has raised the issues of his "Counter-Claim". Defendant's Answer contained a Counter-Claim pursuant to Rule 8 of the Tennessee Rules of Civil Procedure,
showing a plain statement as to why he was entitled to relief, and it also contained a demand for judgment. The fact that the pleading was not denominated as a "Counter-Claim" does not preclude the Court from treating it as such, because Rule 8 permits a trial court discretion to consider wrongly labeled answers and counter-claims as if they were properly titled: "The Rule looks to substance and not to form, when determining whether a pleading is an answer or a counter-claim". *American Actuaries, Inc. v. Mid Amer. Diversified Serv., Inc.,* Shelby Equity No. 10, 1988 WL 31964 at *2 -3 (Tenn. Ct. App. Apr. 7, 1988)(citing *Rule v. Bell,* 617 S.W.2d 885 (Tenn. 1981).

However, defendant raised these issues in the Motion to Alter or Amend Judgment. The Trial Court denied the motion and found the claims to be without merit. Thus, the Trial Court considered the counterclaims and made disposition. While some of the issues were not included in the "Counter-Claim", the Trial Court, pursuant to the Motion, found these also to be without merit and were included in the Trial Court's denial of the Motion to Alter or Amend. We find no abuse of discretion in the Judge's ruling.

Plaintiff requests damages against defendant pursuant to Tenn. Code Ann. § 27-1-122, for filing a frivolous appeal. We conclude that the award of damages for filing a frivolous appeal is not warranted in this case.

For the foregoing reasons, we vacate the monetary judgment of the Trial Court and remand for determination of the reasonable value of plaintiff's services to defendant. We otherwise affirm the Judgment of the Trial Court and remand, with the cost of the appeal assessed one-half to Samuel Dean Williams, and one-half to Russell W. Coffey.

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HERSCHEL PICKENS FRANKS, P.J.