IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs April 7, 2009

BOBBY J. COLLINS v. LYNDA C. FUGATE

Appeal from the Chancery Court for Loudon County
No. 10893 Frank V. Williams, III, Chancellor

No. E2008-01672-COA-R3-CV - FILED JULY 30, 2009

This appeal arises out of litigation in the trial court pertaining to a disputed interest in the use of a boat dock. Bobby J. Collins filed suit against Lynda C. Fugate seeking compensation for labor expended and materials used in the construction of a boat dock. He claimed that, some ten years before filing suit, he helped build the dock on lakeside property owned by Ms. Fugate. The plaintiff contended that, in exchange for building the dock, the defendant gave him a "lifetime dowry" to use her property and dock his houseboat. The defendant acknowledged an agreement between the parties, but contended that it ended by its own terms before she revoked her permission for the defendant's continued use of the property. Following a bench trial, the court found that the plaintiff had a revocable personal license to use the defendant's property that was terminated when and by virtue of the fact he had sold his boat. The complaint was dismissed. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which D. MICHAEL SWINEY and JOHN W. MCCLARTY, JJ., joined.

Thomas F. Mabry, Knoxville, Tennessee, for the appellant, Bobby J. Collins.

Kimberlee A. Waterhouse, Lenoir City, Tennessee, for the appellee, Lynda C. Fugate.

OPINION

I.

At the time of the December 2007 trial, the defendant was 63 years old. She and the plaintiff had had a friendly relationship; they had known each other for fifty years and were related by marriage. She was also a good friend of the plaintiff's brother, Lynn Collins ("Lynn"). In 1995, the defendant purchased a vacant, lakeside lot in Loudon County. She did not own a boat and had no plans to buy one.

Each party attributed the idea to build a dock to the other. According to the defendant, the plaintiff approached her and the following happened:

> [The plaintiff] came to me and asked me if I would build a permanent dock there. That if I built one, it would benefit him and it would also benefit me. And I asked him, I said, how do you see that? And he said, I'll help you and you help me, and he said we'll build it. And if you'll let my boat sit there six to eight years, that will pay for what I would have in building for the dock, and that way, I would have a place to put my boat and wouldn't have to put it in a marina.

The plaintiff had a different memory. He said the defendant knew he had been remodeling a houseboat for years. He said that, in 1996, the defendant "brought this offer, she said if I would build a dock, she would give me a lifetime dowry as long as I wanted to use it." The plaintiff liked the idea because he had planned to take his boat to another's friend's dock, but the defendant's property was off the main channel, in a quieter cove, and much closer to the plaintiff's home. The plaintiff stressed that he would not have built the defendant's dock had he known he could not use it "from now on."

In preparing to build the dock, the defendant cleared the property, cutting and hauling away trees with the help of her sons, Lynn, and, on "one or two days," the plaintiff. The defendant purchased gravel, part of which was hauled in by the plaintiff, and she and Lynn used her tractor to grade and install a road that led to the planned dock site. The plaintiff, then a licensed electrician, built a transformer center for the utility company to install electricity and a meter center to serve her property and an adjoining property and the defendant paid for the materials. The plaintiff also installed a water line and free spring faucet that the defendant had purchased.

Two docks were ultimately built or installed. First, a two-level, roofed permanent dock with a slip and a boat lift were constructed. Next, the plaintiff installed a walkway and a separate, floating dock to which he tied his boat. There was no dispute that the walkway and floating dock belonged to the plaintiff. The defendant, however, said that the floating dock was necessary because, owing to the plaintiff's miscalculations, the permanent dock was not big enough to accommodate his boat. The plaintiff denied any such error, explaining that his boat needed to be much further out in deeper water. According to him, building the permanent dock for the defendant had nothing to do with his floating dock. The plaintiff said: "I built that dock because she wanted a dock built and she said she'd give me a lifetime dowry to leave my houseboat down there."

At the plaintiff's request, John Prospero, a friend of his, drew up plans for a permanent dock. The defendant and Lynn built the permanent dock with some help from the plaintiff. It was undisputed that the defendant paid for materials for the dock, including lumber, flooring, "quickcrete," bolts and nuts, the plumbing and electrical supplies, the soffit, the gutters and the roof shingles. The deck's platform and flooring were installed by the defendant, the plaintiff, Lynn, the defendant's son and others, while the roof was provided and installed by Prospero and his crew. According to the defendant, Prospero declined her offer to pay him for his work and the materials he supplied, telling her he was doing the work for the plaintiff.

At some point in the last few years of their agreement, a dispute arose over the utility bills for the dock. After the plaintiff declined to pay half of the electric bill each month, the defendant disconnected the utilities she had been paying since construction commenced in 1996. With her permission, service was restored in the plaintiff's name and he paid the electric bill from February to June of 2005. After "vandalism" to her boat lift in July 2005, she had the electricity turned off again. She explained that the plaintiff removed metal parts that were welded onto the lift, ripped off carpeting he had installed, leaving exposed nails, cut the lock on the electrical box and removed the fuse.

The proof showed that the plaintiff had been trying to sell his boat, floating dock and walkway as early as January 2005. According to the plaintiff, after the power was cut off, he sold the boat and had the buyer take it to the defendant's property to clean and use it. The defendant discovered the buyer and his friend there using a generator and called the police to have them removed. The buyer was not able to make the payments on the purchase and returned the boat to the plaintiff. After the incident with the buyer, the plaintiff took his boat away and never brought it back to the defendant's property.

In October 2005, the defendant had her attorney write a letter to the plaintiff informing him that he was no longer welcome on her property because his boat was no longer being docked there, he had sanctioned others to come on her property, and he had vandalized her boat lift. The plaintiff acknowledged that the letter advised him to contact counsel's office to arrange for the removal of his ramp and floating dock. He did not take action until February 2007 when, without notice to the defendant, he arranged for a crane and barge to remove the walkway and floating dock. In doing so, he admitted cutting off at ground level "his" 6 x 6 posts that connected the boat ramp to the floating dock. The plaintiff kept his boat at the defendant's property from the end of 1996 until sometime in 2005. He admitted telling the defendant that the permanent dock was his because he had built it, and that he would take it down. After the incident when the defendant had the boat's buyer removed from her property, the plaintiff wanted to be rid of the boat because he could not get along with the defendant anymore. The plaintiff said when the defendant revoked her permission to use her property, "the boat was gone, but it wasn't sold."

The defendant denied that she ever requested that the plaintiff take his boat and leave her property. She testified, "I never did ask him to leave the property until he had sold his houseboat. After he had sold his houseboat, he had no more claims on my property." The defendant said she had honored her agreement with the plaintiff and had actually allowed him the use of her property even longer than they had contemplated. The defendant had not opposed extending the agreement after the initial six to eight years and said that the plaintiff "could have still been there today if he hadn't sold his boat."

The plaintiff had a long-time working relationship with Prospero, owner of Anderson Truss Company. Prospero was formerly a licensed contractor and had built several boat docks during the 1970s. Around that time, he met the plaintiff and the plaintiff sometimes worked for him, beginning with remodeling Prospero's own home without pay. Instead, over the years, he and the plaintiff "traded work back and forth" on different projects, and it was "like trading dollars." Because he was familiar with dock construction, Prospero drew the plans and obtained the necessary TVA permit

for the defendant's dock to be built in order to assist the plaintiff. Prospero said, "From the very beginning when [the plaintiff] walked into my office, get me a permit, to the very end of this thing, I've had my influence in it, my labor in it, and the people that work for me." Prospero paid his own workers, and in return, the plaintiff installed five water air conditioning units at a new home that Prospero was building. Prospero supplied the roof trusses, the cupola, lighting, and ceiling paneling for the permanent dock. Prospero said his involvement with the defendant's dock was initiated by and "strictly [with] [the plaintiff]." He presented an estimate he had prepared, retroactively, for "$40,355.61" as his total cost, at current prices, for miscellaneous items, materials and labor for the dock. Prospero had nothing to substantiate his actual expenses toward building the dock because back then he "didn't keep track of anything."

Jimmy Young, the plaintiff's son, helped in preparing the site and building the dock. He recalled that it was a "long project," and he had worked during the week and on weekends. He received no pay because he and the plaintiff often helped each other. Young said he had often heard that the plaintiff "could always – as long as he wanted to leave his boat there, he could leave it there for doing this work."

Eldon Tullock, an employee of Anderson Truss Company, delivered the trusses and the floating dock to the defendant's property. The defendant told him that "he," referring to either the plaintiff or Lynn Collins, could use the dock "as long as he lived or as long as he wanted to."

Terry Rapier, a friend of the plaintiff, helped to lay the flooring and did other carpentry work. When he was at the dock site, he asked when the plaintiff had purchased the lot, to which the defendant replied that it was hers. Rapier said he asked why the plaintiff was building the dock and the defendant replied, "well, he's got lifetime use of it."

Rosalee Michaels had known both parties for many years and remained friends with them. She had been to the property while the dock was being built and heard the defendant say that she had given the plaintiff "a lifetime dowry to the boat dock and the boat."

The plaintiff's contributions included helping to clear the defendant's lot, hauling gravel for the roadway, installing water lines and electricity, and helping to construct the base upon which the dock was built, while the defendant paid for the materials the plaintiff used. The plaintiff and Prospero never kept ledger sheets showing the dollar value of the projects they did for each other because Prospero was "a guy that you don't have to do that on." The defendant introduced receipts reflecting that she had paid for materials for the dock and related improvements totaling over $8,000.

The plaintiff stated that the defendant had not kept up her part of their agreement. He could not say whether the "lifetime dowry" was for him or his boat, but understood that he "had a lifetime dowry or [he] [would] never [have] built the dock." He felt that after he removed his boat, he still had a right to use the defendant's dock just to fish.

Michael Cohen, the plaintiff's real estate appraiser, valued the defendant's lot as a whole at $325,000 and the boat dock at $45,000. Devoy Brunson, a certified general appraiser, valued the whole of the defendant's property at $273,000 with the dock having a value of $23,000.

In dismissing the complaint, the trial court stated:

> [T]he law . . . is entirely against the plaintiff here. He's attempting to establish an interest in land, and as you know, that requires that that interest be in writing unless it is in the nature of a prescriptive easement or something of that sort. And really, even he admits that he doesn't own the land. He doesn't own the dock. It's not his. What he's attempting to establish is the right to use it. To come and go across not only her land but also to use the docks, and that's in the nature of an easement. It's not an ownership in the thing itself, but an ownership of the right to use a thing that belongs to somebody else. And there's been no grant in writing to establish – and he claims that this is for life. But that would require some grant to him or . . . that he [had] established it in a prescriptive way. And really, what we have is a personal license. This lady give him a personal license for the use of land, and that is revocable. A license is revocable at the will of the person who gave it. Meaning that [the defendant] can revoke that license. And really the argument between them is that he says that the deal was for life. She says, no, it was for as long as he kept his boat there. He didn't keep his boat there; therefore, he has no longer any right to use it, and that was after . . . nine years. And as I have listened to the testimony, it just does appear to me that [the plaintiff] is a trader.
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> [The plaintiff] can't show us today what he invested with any sort of specificity in terms of hours of labor or materials or anything else. And so we don't know even how any of this washes out.
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> And so this is a gentleman who, because he doesn't keep track of things like this, is, in essence, bargaining in the hope that things are going to work out roughly equal, if not to his benefit. [The plaintiff] attempts to establish an interest in the dock on the theory of quantum meruit, but that limits him to his actual costs, and here we don't even know what that is. There's been no testimony. No evidence whatsoever about his actual costs. We have estimates of what the value of it is today. We have appraisals of the thing today . . . .

* * *

> We don't know because there would be so many possible factors that would go into it. There's just no way that this man can possibly prevail on this. It would be entirely speculative. I don't see how he could generate the kind of data, financial data, that would be necessary for him to establish some sort of financial interest, an equitable interest in that dock that would then justify me putting down a judgement against [the defendant], against her for his benefit for the number of hours that he worked and the value of those hours and the value of the trusses that Mr. Prospero put up there, which would have then in turn have been based upon the value of the work that he did for Mr. Prospero.
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> The courts don't make deals. People make deals. And it's the courts' duty to determine what those agreements are.
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> And if the facts are as [the plaintiff] says that he was supposed to have the use of this dock for the duration of his natural life, then it would be pretty apparent to me that he made a bad bargain because he didn't have anything in writing. He assumed that he could operate and function with [the defendant] the way he had with Mr. Prospero and apparently other people, and that just didn't work out to be true. He made a bad deal. And so that's all there is to it. It's her dock. She owns it. And so judgement [sic] for the defendant.

The plaintiff moved the court to set aside the judgment and for a new trial and moved to amend the pleadings to conform to the evidence. In short, the plaintiff sought "his day in Court . . . to present all viable theories" of the nature of the parties' agreement "where consideration for the agreement was exchanged before [being] thwarted by the threats of the Defendant . . . ." Following a hearing, the trial court denied the motions. The plaintiff timely appealed.

II.

The plaintiff presents three issues that we restate as follows:

> 1. The trial court erred in ruling that the plaintiff had a revocable personal license to use the defendant's real property.

A. The plaintiff obtained an irrevocable license to use the defendant's property by virtue of the valuable improvements he made.

B. The plaintiff was forced to abandon the rights he obtained as a result of threatening actions by the defendant, for which he is entitled to reimbursement for the value of the improvements he made.

2. The trial court erred by failing to allow the pleadings to be amended to conform to the proof presented at trial pursuant to Tenn. R. Civ. P. 15.02.

3. The trial court denied the plaintiff his "day in court" by failing to permit him to present all viable theories of relief and recovery under the parties' agreement.

We note that in the concluding paragraph of her brief, the defendant "requests that the decision of the Trial Court be affirmed with the costs of this appeal, including [her] attorney fees, be taxed to [Collins] as this appeal is frivolous." The defendant presents no further argument, nor does she provide any citations to authority or references to the record in support of this "issue" as our rules require. *See* Tenn. R. App. P. 27(a)(7). Defendant's "issue" is also deficient in that it was not stated in the "statement of the issues presented for review" as required by Tenn. R. App. P. 27(a)(4). Because of these deficiencies, we will not consider this "issue."

III.

This case was tried by the court without a jury. As a result, our review is de novo upon the record of the proceedings with a presumption of correctness as to the trial court's findings of fact. Tenn. R. App. P. 13(d). The judgment of the trial court should be affirmed, absent errors of law, unless the preponderance of the evidence is against those findings. ***Bogan v. Bogan***, 60 S.W.3d 721, 727 (Tenn. 2001). The trial court's conclusions of law are reviewed de novo with no presumption of correctness. ***Ganzevoort v. Russell***, 949 S.W.2d 293, 296 (Tenn. 1997).

IV.

The plaintiff first contends that he "obtained an irrevocable personal license (or comparable property interest) for the undeniable work, materials, labor and effort that he made to improve [the defendant's] real property." Again, there is no dispute that the parties entered into an agreement that generally provided that the plaintiff would help build a permanent dock on the defendant's property in exchange for being allowed to dock his houseboat there. The trial court found that the agreement was a personal license. Neither party disagrees with the finding of a license, only whether it is revocable.

A " 'license,' with respect to real estate, is an authority to do a particular act or series of acts on another's land without possessing any estate therein. It is not assignable, and is generally

revocable at the will of the licensor." ***Barksdale v. Marcum***, 7 Tenn. App. 697, 708 (Tenn. Ct. App. 1928).

Both parties cite to this Court's decision in ***Daugherty v. Toomey***, 222 S.W.2d 195, 196 (Tenn. Ct. App. 1949) in support of their position. That case involved adjoining property owners who entered into an oral agreement to build a shared garage wall near their property line. The wall and a portion of the defendants' garage, with the knowledge of the plaintiffs' predecessor in title, were built on the latter's property. Years later, a boundary dispute arose when the plaintiffs filed an action to force the defendants to remove that part of their garage located on the plaintiffs' property. The trial court denied the plaintiffs' request, finding that the defendants had acquired an interest in the defendant's property under the oral license that had been fully executed. In affirming the judgment, this Court agreed that the doctrine of equitable estoppel applied and noted the following:

> Where the licensee has acted under the license in good faith, and has incurred expense in the execution of it, by making valuable improvements or otherwise, it is regarded in equity as an executed contract and substantially an easement, the revocation of which would be a fraud on the licensee, and therefore the licensor is estopped to revoke it, particularly where the licensor joins in the enterprise and accepts the benefits of the licensee's labor and expense; and the rights of the licensee will continue for as long a time as the nature of the license calls for. It has also been held that the license cannot be revoked without reimbursing the licensee for his expenditures or otherwise placing him in status quo.

Id. (quoting 53 C.J.S., Licenses § 90). In denying the plaintiffs relief, this Court further observed that they had "made no offer to pay the expenses . . . [or] to reimburse" the defendants for the cost of relocating and rebuilding the defendant's garage. ***Id***. at 197.

Farley v. Ellis, W2000-00354-COA-R3-CV, 2000 WL 1876431 (Tenn. Ct. App. filed December 27, 2000), heavily relied upon by the plaintiff, is also instructive. In that case, this Court summarized the relevant facts as follows:

> [T]he record indicates that Charles Ellis gave Chris Farley permission to enter and occupy the subject property for as long as he wished, as long as he paid the taxes. We agree with the trial court that the consideration provided by Mr. Farley pursuant to his agreement was that he "move his home in Arkansas to Crockett County, Tennessee to help Charles Ellis care for Dorothy Ellis, [Mr. Farley's mother and Mr. Ellis' then-wife]." However, we believe the evidence preponderates against the trial court's finding that the agreement was an oral contract for the sale of land. Instead, we believe that Mr. Ellis granted Mr. Farley a license, allowing Mr. Farley to occupy the property in exchange for the consideration he provided, as long as he

> paid the taxes. The record shows that upon Mr. Ellis's representations, Mr. Farley moved his family to Crockett County, taking up residence on the property adjacent to the home of Charles and Dorothy Ellis. Mr. Farley paid the property taxes from 1994 though 1997, while Charles Ellis owned the property. He attempted to meet the condition of his occupancy by mailing a check to Wanda Ellis for the 1998 property taxes, however, was prevented from fulfilling his obligation in 1998, as she returned the check.

Id. at *7. The proof further showed that in reliance on the parties' agreement, Mr. Farley had spent months clearing the subject property before expending considerable money and labor making improvements. Mr. Farley sought reimbursement for his labor and improvements to the property plus the expenses he incurred in relocating his family and his home from Arkansas to Tennessee. In their counterclaim, the Ellises sought possession and rent from the time that they had demanded that Mr. Farley remove himself and his home from their property. On appeal, this Court concluded that the trial court erroneously applied the doctrine of equitable estoppel to order specific performance of the alleged oral contract to sell the property. Instead, however, the ***Farley*** court held that "Mr. Farley was granted a license to enter and occupy some of Ellis's property for as long as he wished if he paid the property taxes." ***Id***. at *6. The terms of the license having been met, "Mr. Ellis [was] estopped from removing Mr. Farley from the property without proper reimbursement for the damages lawfully due." ***Id***. at *8. Regarding the appropriate measure of damages, this Court further held:

> In his complaint, Mr. Farley sought the alternative relief of damages to reimburse him for his labor and the material purchased in making permanent improvements to the property as well as his moving expenses. Although Mr. Farley claims that he spent somewhere between $15,000 and $16,000 in improving the land, the record does not establish the value of the improvements on the land. It appears that Mr. Farley and his wife did much of the work themselves and were able to trade some of the materials. Mr. Farley should not receive reimbursement for the property taxes paid nor for his relocation expenses, as these appear to be part of the licensing agreement. Also, no additional rent is due Mr. and Mrs. Ellis, as he provided the consideration agreed to and when requested to vacate the premises, he was not tendered reimbursement for the improvements made. The case should be remanded to the trial court for a determination of damages based upon the value of the permanent improvements to the land.

Id.

Lastly, in ***Lee Highway & Associates, L.P., v. Pryor Bacon Company***, C/A No. 03A01-9507-CV-00237, 1995 WL 619941, (Tenn. Ct. App. E.S., filed October 19, 1995), two adjacent commercial property owners orally agreed to construct an opening between their two

shopping centers to permit vehicles to travel between the two locations. The plaintiff had dirt removed to accommodate two-way traffic, extended its asphalt surface to connect with the defendant's concrete surface and had curbing installed. The accepted cost of the construction undertaken by the plaintiff was $3,600. The defendant did not share the cost of the driveway's construction but was aware of the work being done by the plaintiff. Some eight years later, a dispute arose between the parties and the defendant physically blocked the driveway, thereby preventing vehicles from traveling between the two properties. The plaintiff filed suit to prevent the defendant from closing the opening. The plaintiff claimed that the parties' 1986 agreement, coupled with its expenditure of funds in connection with that agreement, estopped the defendant "from revoking the license agreement." ***Id***. at *1. The plaintiff further claimed that "essentially, the license became an easement." ***Id***. The trial court granted summary judgment to the plaintiff. On appeal, this Court vacated the judgment:

> In the instant case, unlike ***Daugherty***, the defendant has offered to reimburse the plaintiff for the funds expended by the latter to construct the cut-through. In fact, it has paid into court the claimed construction cost of $3,600. While we believe this should be supplemented by an award of prejudgment interest, we find that the defendant's offer, as modified by us, will make the plaintiff whole. Once the plaintiff has been reimbursed for its expenditure, it will be placed back where it would have been had the parties not agreed to the cut-through.
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> We hold that the defendant's offer "to do equity" takes this case out of the holding of ***Daugherty***; and since his offer, as modified by our award of prejudgment interest, will place the plaintiff in "status quo," we do not believe the doctrine of equitable estoppel prevents the defendant from invoking the statute of frauds in this case. The plaintiff was given a license to go across the defendant's property. We find that the license can be revoked without working a fraud on the plaintiff provided the defendant fully reimburses the plaintiff for the monies it expended in building the cut-through.

Id. at *4-5. The plaintiff contends that, of the cited decisions, ***Farley***, in particular, stands for the proposition that a personal license to real property, ordinarily revocable at will by the licensor, becomes irrevocable when the licensee makes improvements to the property. He asserts:

> The Chancellor erred in applying the concept of revocability of a license where [the plaintiff], the licensee, gave consideration and erected fixtures on the real property. As is abundantly clear, under Tennessee law, . . . [the plaintiff's] agreement with [the defendant] to provide labor and materials and expertise to build the boat dock, coupled with the actual erection of the boat dock, which

> unquestionably led to an increase in the value of the real property, made the "license" irrevocable.

While it is clear from the above precedent that a license may become irrevocable through principles of estoppel, it is also clear that the cases impose limitations on that doctrine and that those limitations are applicable to the present case. Even if a license becomes irrevocable, its irrevocable life span is only "for as long a time as the nature of the license calls for." ***Daugherty***, 222 S.W.2d at 196. The nature of this license was for a landing for a dock for a houseboat. The plaintiff is now trying to enforce the license for so long as he lives, even though he no longer owns a boat. The trial court noted the defendant's concession that the plaintiff could have the license "for as long as he kept his boat there."

It is also clear from the cases that the equities must weigh in favor of the person seeking to make the license irrevocable. In ***Lee Highway***, for example, the licensor was able to nullify any irrevocability by simply tendering to the licensee the money he had been out in relying on the licensor's promises or actions. The plaintiff did not convince the trial court, and does not convince us on appeal, that he is being treated unfairly. With a limited investment of his own time and resources, he used the defendant's land and the permanent dock for nine years. It might have been longer. We also note that the plaintiff was not prevented from removing the walkway and dock that related particularly to the houseboat. The plaintiff is a trader and a gambler of sorts. He is willing to take a chance on a deal without nailing down the details or keeping track of exactly who does what. In the present case, there was no clear delineation of who was to do what. Clearly, both the plaintiff and the defendant and numerous others contributed toward building the access and the permanent dock. Clearly, having the access and the permanent dock benefitted the plaintiff for nine years.

Finally, from the above cases it is clear that even if the license is treated as irrevocable, the remedy for wrongful revocation is damages in the amount of the value bestowed on the defendant or the amount expended by the plaintiff. ***Farley***, 2000 WL 1876431 at *8 (value of improvements); ***Lee Highway***, 1995 WL 619941 at *4-5 (money expended). It was the plaintiff's burden to prove those damages. ***D.T. McCall & Sons v. Seagraves***, 796 S.W.2d 457, 464 (Tenn. Ct. App. 1990). We will assume, arguendo, that the plaintiff proved the revocation was wrongful, and consider whether he proved the amount of a monetary recovery. Given that both plaintiff and defendant as well as friends and allies of each put time and material into the permanent dock, the current value of the permanent dock, owned by the defendant, would not be the correct measure of recovery. Thus, plaintiff was left with only the option of proving his expenditures. As to plaintiff's proof of expenditures, the trial court stated: "He attempts to establish an interest in the dock on the theory of quantum meruit, but that limits him to his actual costs, and here we don't even know what that is. There's been no testimony. No evidence whatsoever about his actual costs." The court continued at length to explain the interaction with others to secure labor and material through trades and barters that rendered it virtually impossible for the plaintiff to prove expenditures on the permanent dock. We agree completely with the trial court's observations on the lack of proof for a monetary recovery.

This leads us to the conclusion that there is no merit to the first and second issues raised. We hold that the plaintiff did not prove that unfair actions of the defendant gave rise to an irrevocable license. We also hold that, assuming plaintiff had an irrevocable license, he was not entitled to the full value of any improvements made and he did not prove his expenditures so as to recover them.

V.

Consistent with the plaintiff's approach, we combine our discussion of his remaining two issues. Taken together, the plaintiff asserts that the trial court erred in denying his motion to amend the pleadings to conform to the evidence, thereby denying him, in his view, the opportunity to present all viable theories of the parties' agreement and recovery thereunder. The plaintiff says that despite much evidence of an oral agreement or parol contract, the Court failed to consider all other viable theories of recovery – "namely in contract as well as quantum meruit."

First, we observe that the transcript of the hearing on the motion to amend the pleadings pursuant to Tenn. R. Civ. P. 15.02 was not made a part of the appellate record. We are thereby precluded from reviewing the argument and the basis for the trial court's ruling as germane to this issue. Nonetheless, we have considered this issue and find it to be without merit. The record reflects that the trial court considered and implicitly rejected the plaintiff's alternative theories of relief and recovery when it correctly characterized the parties' agreement, consistent with the evidence presented, as a personal license given to the plaintiff. As earlier discussed, the license was not made irrevocable by the improvements the plaintiff made to the property and no damages were due given the complete lack of proof. In so ruling, the trial court rejected outright any claim of a lifetime easement.

The various "theories" are encompassed in the trial court's ruling and in our reasoning above. We conclude that the trial court did, in fact, consider all viable theories of the parties' agreement and correctly applied the law to deny the plaintiff's claim for relief.

VI.

The judgment of the trial court is affirmed. This case is remanded to that court, pursuant to applicable law, for collection of costs assessed below. Costs on appeal are taxed against the appellant, Bobby J. Collins.

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CHARLES D. SUSANO, JR., JUDGE