COURT OF APPEALS
DECISION
DATED AND FILED

March 28, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

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

Appeal No. 2012AP1875 **Cir. Ct. No. 2010CV547**

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

KEVIN E. ANDERSON, DAVID M. ANDERSON AND GREGORY J. ANDERSON,

PLAINTIFFS-RESPONDENTS-CROSS-APPELLANTS,

V.

KRISTINE L. BLACKLOCK,

DEFENDANT-APPELLANT-CROSS-RESPONDENT.

DALE BLACKLOCK,

THIRD-PARTY PLAINTIFF,

V.

KEVIN E. ANDERSON, DAVID M. ANDERSON AND GREGORY J. ANDERSON,

THIRD-PARTY DEFENDANTS.

APPEAL and CROSS-APPEAL from a judgment of the circuit court for Sauk County: GUY D. REYNOLDS, Judge. *Affirmed*.

Before Sherman, Blanchard and Kloppenburg, JJ.

¶1 KLOPPENBURG, J. Brothers Kevin, David, and Gregory Anderson sought a judgment of partition, asking the court to divide a 220-acre family farm among them and their sister Kristine Blacklock, and to find that a fifty-five acre parcel that Kristine had previously acquired constituted her one-quarter share pursuant to an alleged oral agreement, leaving the remaining 165 acres to be divided equally among the three brothers. The parties agree that the alleged oral agreement would be void under the statute of frauds, but disagree about whether the court could properly enforce it as a matter of equity. Separately, Kristine counterclaimed for reimbursement for work that she and her husband claimed to have performed on the farm.

¶2 The circuit court enforced the oral agreement advanced by the three brothers, dividing the remaining 165 acres among the brothers as they had requested and ruling that Kristine had no interest in those remaining 165 acres. On the separate issue, the court ordered the brothers to pay Kristine and her husband $25,000 in equitable compensation for their work on the farm.

¶3 Kristine appeals from the judgment of partition divesting her of any interest in the 165 acres, and the three Anderson brothers cross-appeal from that part of the judgment ordering payment to Kristine. Because we conclude that the circuit court applied the correct legal standard to properly found facts, we affirm each of the challenged decisions.

BACKGROUND

¶4 In its oral ruling and written decision following a bench trial, the circuit court made the following findings.

¶5 In 1999, the siblings' father deeded to his four children, the three Anderson brothers and Kristine Blacklock, each a one-quarter interest in the 220-acre family farm as tenants in common, subject to the father's life estate. The four siblings understood that the 220-acre farm was to be divided equally among them.

¶6 In 2004, Kristine asked her father and three brothers to be deeded her share at that time, and it was agreed among the four siblings that Kristine would acquire a fifty-five acre parcel as her share of the 220-acre family farm and relinquish her ownership interest in the family farm. The agreement was oral and not reduced to writing. Pursuant to the oral agreement, the siblings and their father executed a quitclaim deed transferring fifty-five of the 220 acres to Kristine and her husband. Subsequently, Kristine refused to allow the three Anderson brothers to divide the remaining 165 acres among them equally, and did not relinquish her interest in the remaining 165 acres.

¶7 Turning to the facts underlying the equitable contribution issue, Kristine and her husband performed various tasks on the 165 acres for 700 hours in 2004, 800 hours in 2005, 900 hours in 2006, and 100 hours in 2007, for a total of 2,500 hours. The standard hourly rate in the area for the types of work they performed was ten dollars per hour.

¶8 Additional facts relating to each of the two issues raised in the appeal and the cross-appeal are set forth in the discussion of those issues.

DISCUSSION

A. Enforcement of Oral Agreement

¶9 Kristine challenges the circuit court's determination that the alleged oral agreement could be enforced because her brothers met the threshold evidentiary requirements for an exception to the statute of frauds. The court concluded that (1) there was an oral agreement among Kristine, her brothers, and the father, that Kristine received her fifty-five acre share of the farm in 2004 and that the brothers would get their shares from the remaining 165 acres, and (2) Kristine would be unjustly enriched if she were to receive, in addition, one-quarter of the remaining 165 acres despite the oral agreement. For the reasons that follow, we conclude that the circuit court's findings were not clearly erroneous and that it properly applied the relevant law to those findings in enforcing the oral agreement.

1. Legal Principles

¶10 A contract to convey an interest in land must be in writing under the statute of frauds. WIS. STAT. § 706.02 (2011-12).[1] However, if such a transaction does not satisfy the statute of frauds, a court may still exercise its equitable discretion to enforce the transaction, under WIS. STAT. § 706.04, if certain conditions are met. This is known as the "equitable alternative" to invalidity under the statute of frauds. ***Spensley Feeds, Inc. v. Livingston Feed & Lumber, Inc.***, 128 Wis. 2d 279, 287, 381 N.W.2d 601 (Ct. App. 1985).

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

¶11 The first condition under WIS. STAT. § 706.04 is that "all of the elements of the transaction are clearly and satisfactorily proved." The second condition is that the transaction must fall within one of three "exceptions," each of which requires application of an equitable doctrine. ***Spensley Feeds***, 128 Wis. 2d at 288. The "exception" that applies here is the second equitable doctrine, which provides that "[t]he party against whom enforcement is sought would be unjustly enriched if enforcement of the transaction were denied." WIS. STAT. § 706.04(2)

¶12 To prove unjust enrichment, the party seeking to enforce the agreement must prove: (1) a benefit conferred on the receiving party; (2) knowledge or appreciation by the receiving party of the benefit; and (3) acceptance or retention by the receiving party of the benefit under circumstances making it inequitable for the receiving party to retain the benefit without payment of its value. ***Puttkammer v. Minth***, 83 Wis. 2d 686, 689, 266 N.W.2d 361 (1978).

¶13 We generally review a decision in equity for an erroneous exercise of discretion. ***Production Credit Ass'n of Madison v. Jacobson,*** 131 Wis. 2d 550, 555, 388 N.W.2d 655 (Ct. App. 1986). If the circuit court bases its decision to grant relief on findings of fact, we will affirm unless the findings are clearly erroneous. WIS. STAT. § 805.17(2); ***Otto v. Cornell***, 119 Wis. 2d 4, 8, 349 N.W.2d 703 (Ct. App. 1984). We will affirm the circuit court's ultimate decision to grant equitable relief if the court examined the relevant facts, applied a proper standard of law, and using a demonstrated rational process, reached a conclusion that a reasonable judge could reach. ***Loy v. Bunderson***, 107 Wis. 2d 400, 414-15, 320 N.W.2d 175 (1982).

2. Relevant Testimony at Trial

¶14 Kevin Anderson testified in relevant part that: In 2004, Kristine told Kevin that she wanted to take her share of the family farm to build a horse barn and house; Kevin responded, "[i]f it was okay with dad, it would be okay with me"; and the fifty-five acre parcel transferred to Kristine by the quitclaim deed "represented" to Kevin that Kristine "was taking her share" of the family farm.

¶15 David Anderson testified in relevant part that: In 2004, Kristine "said she wanted her share of the farm early" because she had horses and wanted to build a pole barn and house; David told Kristine that, "it was okay with me if it was okay with dad"; David was "led to believe that by signing [the quitclaim deed], Kristine was receiving her share of the living trust early and that then she would be taken off, her name would be taken off of the remaining, remainder of the farm."

¶16 Gregory Anderson testified that in 2004 Kristine asked him if she could take her share of the family farm, and he said "it was okay with me," and he thought that by signing the quitclaim deed, "we were deeding over Kris's share of the farm."

¶17 Kristine testified in relevant part as follows. In 2004, Kristine asked her father for some land and spoke with each of her brothers to determine their thoughts; she went to her brothers then because the attorney she had consulted told her that she needed them as co-owners to sign off on the deed transferring the fifty-five acres to her; Kristine was interested only in getting property for a house and pole barn and to be close to her father, and she never told her brothers or father that she wanted to take her share of the farm early; while in or before 2004 Kristine understood that all four siblings were going to eventually split the family

farm four ways, the fifty-five acre parcel transferred to Kristine by quitclaim deed was a gift, not her share.

3. Analysis

¶18 The parties do not dispute that the oral agreement that the Anderson brothers seek to equitably enforce was never reduced to writing, as required to satisfy the terms of WIS. STAT. § 706.02. The parties dispute whether the circuit court properly concluded that the oral agreement was enforceable under WIS. STAT. § 706.04. Specifically, Kristine argues that the circuit court erroneously found that (1) the Anderson brothers clearly and satisfactorily proved the elements of an agreement under which Kristine would receive her entire share of the family farm early, in the form of the quitclaim deed for fifty-five acres, at her request, and (2) Kristine would be unjustly enriched if she were to also receive one-quarter of the 165 remaining acres.

¶19 As to the elements of the agreement, the circuit court made detailed findings based on the evidence and testimony at trial. The circuit court noted that Kristine testified that in 2004 she knew the farm was to be split four ways, she talked with each brother for forty-five to sixty minutes and did not ever tell them that she wanted the fifty-five acres as her share, and she considered the transfer to be a gift but never discussed getting the property as a gift with her brothers. The circuit court reviewed how each of the three Anderson brothers testified in effect that Kristine had said that she wanted to take the fifty-five acre parcel as her one-quarter share of the family farm early.

¶20 Assessing the weight and credibility of the testimony, the circuit court found that the three brothers' recollections of the three conversations leading up to the signing of the deed was "closer to what was said," all four of the siblings

knew about each having a one-quarter interest in the farm, and the term "share" or "portion" came up in those conversations, but nothing was ever said about a gift to Kristine. The circuit court found that the size of the parcel, fifty-five acres, exactly one-quarter of the 220-acre family farm, corroborated the finding of an agreement among the family members that Kristine was taking her one-quarter share early, and that the brothers would take their quarter-shares from an equal division of the remaining 165 acres later. The circuit court concluded that the Andersons had clearly and satisfactorily proved the elements of that agreement.

¶21 Kristine points out that the brothers' testimony served their interests, and that her position that there was no such agreement is supported by non-testimonial evidence that includes the quitclaim deed to her, her signing certain crop lease agreements for the remaining 165 acres, and her subsequent work on all 220 acres. Kristine's argument is essentially a challenge to the circuit court's credibility and evidentiary findings. She asks us to substitute her version of the facts for the circuit court's. However, the circuit court was entitled to rely on those portions of the testimony that supported its findings, and we will not disturb the circuit court's assessment of the weight and credibility of the evidence. WIS. STAT. § 805.17(2); ***Kersten v. H.C. Prange Co.***, 186 Wis. 2d 49, 56, 520 N.W.2d 99 (Ct. App. 1994) (when the trial court sits as fact finder, it is the ultimate arbiter of the witnesses' credibility, and we uphold its factual findings unless they are clearly erroneous). We affirm the circuit court's findings of fact "as long as the evidence would permit a reasonable person to make the finding." ***Sellers v. Sellers***, 201 Wis. 2d 578, 586, 549 N.W.2d 481 (Ct. App. 1996). The record more than reasonably supports the circuit court's findings as to the oral agreement.

¶22 As noted above, Kristine's arguments amount to the assertion that her version of the evidence is more credible and supported, but she makes no legal

argument beyond that. Independently reviewing the legal significance of these findings, we conclude that the Andersons met their burden of proving the elements of the agreement.

¶23 As to unjust enrichment, the circuit court found no support for Kristine's assertion that the transfer of the fifty-five acre parcel was a gift. The court determined that Kristine would be unjustly enriched if she were to receive one-quarter of the remaining 165 acres, in addition to the fifty-five acres she earlier received, because she would end up with almost half of the entire family farm, or seven-sixteenths, with only three-sixteenths going to each of the three brothers. The court concluded that it would be inequitable to allow Kristine to retain that benefit.

¶24 Kristine concedes that the Andersons conferred a benefit on her and that she knew of the benefit or appreciated it. However, she argues that "it would not be inequitable to permit [her] to retain the benefit," and therefore the court erred in finding inequity under the third prong of the unjust enrichment test. Kristine bases her challenge on the same arguments that she made against the existence of the agreement itself, arguing that there was no agreement, she performed various tasks on the remaining 165 acres, and she signed the crop lease agreements for work on the remaining 165 acres. We reject those arguments for the same reasons we stated above. In exercising its equitable discretion, based on factual findings that are not clearly erroneous as explained above, the court

examined the relevant facts and applied the proper standard of law in determining that Kristine would be unjustly enriched if the agreement were not enforced.[2]

¶25 In sum, we conclude that the circuit court correctly awarded equitable relief under WIS. STAT. § 706.04, because the court properly found that the elements of the agreement were clearly and satisfactorily proved, and that the transaction fell within one of three exceptions under the statute, unjust enrichment.

B. Equitable Compensation

¶26 On cross-appeal, the Andersons challenge the circuit court's award of $25,000 to Kristine for her and her husband's work on the 165 remaining acres of the family farm. Kristine and her husband had counterclaimed for compensation for work that they assertedly undertook on the family farm before partition.

¶27 Partition is an equitable action. ***Kubina v. Nichols***, 241 Wis. 644, 648, 6 N.W.2d 657 (1942); ***Klawitter v. Klawitter***, 2001 WI App 16, ¶7, 240 Wis. 2d 685, 623 N.W.2d 169 (WI App 2000); ***O'Connell v. O'Connell***, 2005 WI App 51, ¶8, 279 Wis. 2d 406, 694 N.W.2d 429. In an action in equity for partition, a co-tenant may seek reimbursement from other co-tenants for work that improves the property, with or without the consent of the co-tenants. ***Rainer v. Holmes***, 272 Wis. 349, 354-55, 75 N.W.2d 290 (1956); *see* ***O'Connell***, 279 Wis. 2d 406, ¶¶15, 18 (a co-tenant has the right to bring an equitable claim for reimbursement for improvements to property without other co-tenants' consent or

[2] We need not address the parties' arguments pertaining to WIS. STAT. § 706.04(3) or reformation because WIS. STAT. § 706.04(2) provides an equitable resolution.

promise of contribution; whether a co-tenant knows about expenditures for the common good is not a bar to bringing a claim in equity). The improvements brought about by the work at issue must be "'necessary, useful, substantial and permanent, enhancing the value of the estate.'" ***Rainer***, 272 Wis. at 354-55 (quoted source omitted).[3]

¶28 As already referenced above, we review a decision in equity for an erroneous exercise of discretion. ***Klawitter***, 240 Wis. 2d 685, ¶8. We uphold discretionary acts if the circuit court "examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." ***Id***. (quoted source omitted) (internal quotation marks omitted).

¶29 Here, Kristine submitted a spreadsheet that she completed in 2010, estimating the hours that she and her husband worked on the farm from 2004 to 2007. She testified as to the different kinds of work that she and her husband performed on the farm. She sought compensation for 4,008 hours of work, at a particular rate of compensation that was reduced by the court.

¶30 Reviewing the evidence and arguments proffered by both parties, the circuit court noted that not all of the work benefited the farm, that some of the numbers on the spreadsheet may not be reliable, and that the standard rate for the kind of work performed was ten dollars per hour. However, the court also identified particular improvements initiated by Kristine that the court found, based

[3] Kristine sought compensation in the alternative under the equitable doctrine of quantum meruit, but given our conclusion regarding the circuit court's reliance on the partition reimbursement theory, we need not address this alternative theory.

on the evidence, were substantial improvements benefitting the farm. The circuit court ultimately determined that Kristine and her husband were due compensation for a total of 2,500 hours of work on those improvements between 2004 and 2007, at a rate of ten dollars per hour. While the Andersons point to particular evidence at trial that in itself would support a finding of fewer hours, the circuit court identified evidence that reasonably supports its finding, and this is sufficient. *See* ***Sellers***, 201 Wis. 2d at 586 (even if evidence permits a contrary finding, we affirm the trial court's findings of fact "as long as the evidence would permit a reasonable person to make the finding").

¶31 The Andersons also argue that Kristine's husband could not be entitled to any compensation because he was not a co-tenant. However, as the circuit court noted, Kristine could have hired him to do the work and so his time was properly included.

¶32 Finally, the Andersons argue that Kristine was obligated to maintain the farm as her father's agent under his power of attorney. However, the evidence was mixed on this issue and the circuit court properly balanced the equities on that mixed record to find, regardless, that "Kristine [was] dedicated to this family farm [and] ... deserves some credit for" what she did on the part of the farm that was no longer hers.

¶33 In sum, the circuit court properly exercised its discretion in identifying the substantial and necessary improvements on which Kristine and her husband worked, determining from its review of the evidence approximately how many hours they spent on that work, and ordering compensation for that work.

CONCLUSION

¶34 For the reasons stated, we affirm the circuit court's judgment in its entirety.

By the Court.—Judgment affirmed.

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