

IN THE COURT OF APPEALS OF IOWA

No 6-155 / 95-424

IN THE MATTER OF THE ESTATE OF KENNETH C. FRENCH, Deceased,

JESSICA FRENCH,
Appellant,

vs

ANITA P. FRENCH, As Executor of the Estate of Kenneth C French,
Appellee

Appeal from the Iowa District Court for Floyd County, Bryan H. McKinley, Judge

The plaintiff appeals a district court ruling granting summary judgment in favor of the defendant on her claim against the estate. **REVERSED.**

Judith O'Donohoe of Eggert, Erb, O'Donohoe, Frye & Von Ah, Charles City, for appellant.

Gregory C. Nicholas of Pappajohn, Shriver, Eide & Nicholas, P.C., Mason City, for appellee.

Considered by Cady, P.J., and Streit and Vogel, JJ.

STREIT, J.

Jessica French appeals the district court's order granting summary judgment in favor of the defendant, Anita P French We reverse and remand.

Kenneth French died on November 1, 1992. His will named his wife, Anita, as executrix of his estate, valued at over $1 1 million The will made no provisions for Jessica, his daughter from a previous marriage. On December 13, 1993, Jessica filed a claim in probate for $96,000 plus interest for her undergraduate and education. Jessica maintained her father had agreed to pay for her college education provided she attend her first two years at North Iowa Area Community College. She alleged she had attended her first two years at NIACC as agreed and wished to transfer to Drake University. Anita paid for the spring 1993 semester at NIACC but declined to make any payments to Drake, where Jessica had transferred. Jessica asserted she was forced to borrow the funds and obtain financial aid.

Anita filed a motion for summary judgment on the grounds the alleged contract was unenforceable because (1) its terms wee too indefinite and (2) it was not supported by sufficient consideration. The district court granted Anita's motion, ruling that there was inadequate consideration to support the promise of education support. Jessica appeals.

Jessica contends her father inequivocally agreed to pay for her college education provided she spend her first two years at NIACC. During those two years, he paid for

Jessica's tuition and books, while Jessica and her mother paid for room and board. Jessica maintains that as a result of this cooperation her mother never pursued any legal channels to ensure educational support from Kenneth. She argues this forbearance is adequate consideration for the promise of payment. Jessica additionally argues Kenneth's estate is equitably estopped from claiming the agreement is unenforceable.

We find Anita's motion for summary judgment was improperly granted.

Our review is for correction of errors of law. Iowa R. App. P. 4.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 237(c); *see Farm Bureau Mut. Ins. Co. v. Milne*, 424 N.W.2d 422, 423 (Iowa 1988). The moving party has the burden to show the nonexistence of a material fact, *Milne*, 424 N.W.2d at 423, and the evidence must be viewed in the light most favorable to the resisting party, *Thorp Credit, Inc. v. Gott*, 387 N.W.2d 342, 343 (Iowa 1986). The procedure is functionally akin to a directed verdict, and every legitimate inference that reasonably can be deduced from the evidence should be afforded the resisting party. *Id. Sherwood v. Nissen*, 179 N.W.2d 336, 339 (Iowa 1970). A fact issue is generated if reasonable minds can differ on how the issue should be resolved, but if the conflict in the record consists only of the legal

consequences flowing from undisputed facts, entry of summary judgment is proper. *Milne*, 424 N.W.2d at 423; *Gott*, 387 N.W.2d at 343.

Anita's first argument was that summary judgment should be granted because the contract between Jessica and her father was not sufficiently definite to be enforceable. The district court ruled that "Jessica's contract claim is not so indefinite that it is unenforceable as a matter of law." We agree. We take no position on whether the contract was sufficiently definite to be enforceable. The district court properly left the resolution of this issue to the trier of fact.

Anita's second argument is that summary judgment should be granted because there was not sufficient consideration to support the contract. The district court agreed, and granted summary judgment. We find that we cannot say as a matter of law that there was not sufficient consideration.

The district court first addressed Jessica's contention that not attempting modification of her parents' divorce decree was sufficient consideration. The court found no consideration existed for two reasons: (1) the act of foregoing a legal right in this instance was not consideration, and (2) a lack of evidence that Kenneth French was aware that Jessica relinquished this claim. The first basis is not convincing: A legal detriment will be present even when a promisee releases or compromises a disputed right or a doubtful legal right asserted in good faith. *See Lakeside Boating and Bathing, Inc. v. Iowa*, 402 N.W.2d 419 (Iowa 1987); *White v. Flood*, 258 Iowa 402, 138

N.W.2d 863 (1965). It is for the trier of fact to decide whether Jessica gave up a legal right. The second basis, however, is controlling. There is no assertion in the record that Kenneth French knew of Jessica's promise to forego legal action. Without knowledge, there can be no bargaining, an essential element of a contract.

The district court next held that Jessica's agreement to attend NIACC could not act as consideration because of a lack of mutuality. The district court did not address the question of whether the contract was enforceable through promissory estoppel, the basis of Jessica's argument on appeal. Anita claims that this argument should not be considered because it was not raised at the district court level. Jessica admits that "[p]erhaps the very words[] 'Promissory Estoppel' were not used in the written documentation submitted to the [district] Court," but claims that the theory was present in her arguments. The Iowa Supreme Court has held that "[t]he issue of estoppel must ordinarily be plead, but it is enough if facts relied upon are plead." *Service Employees Int'l v. Cedar Rapids Community Sch. Dist.*, 222 N.W.2d 403, 408 (Iowa 1974). Jessica's motion for summary judgment contains the following language: "In reliance on this agreement, Jessica French went to NIACC . . ." Although the issue of estoppel was not as clearly discussed as might be desired, we hold that it was sufficiently raised to be considered on appeal.

Promissory estoppel requires: (1) a clear and definite oral agreement, (2) foreseeable and justifiable detrimental reliance, and (3) circumstances that make it

unjust not to enforce the agreement. *In re Scheib Trust*, 457 N.W.2d 4, 8 (Iowa App. 1990). As discussed above, we cannot hold as a matter of law that there was not a clear and definite oral agreement. In addition, the trier of fact must determine whether it was foreseeable and justifiable for Jessica to rely on her father's promise. There are also questions of fact as to whether reliance on Jessica's part was detrimental. The record is not clear on the issue of whether some of Jessica's credits from NIACC did not transfer, and whether this caused her to be set back in her studies at Drake. We hold only that summary judgment was improperly granted on Anita's motion; we express no opinion as to whether the elements of promissory estoppel have been met in this case.

The district court's ruling granting Anita's motion for summary judgment is reversed.

REVERSED.