

IN THE COURT OF APPEALS OF IOWA

No. 9-288 / 88-1533

FILED

DEC 21 1989

CLERK SUPREME COURT

HARVEY V. NOEL,

Appellant,

vs.

309

JEROME D. NOEL, fiduciary of the estate of **CHARLES E. NOEL,**

Appellee.

Appeal from the Iowa District Court for Scott County,
Edward B. deSilva, Jr., Judge.

Both parties appeal from a district court order awarding Harvey Noel approximately \$8900 together with interest from December 9, 1985, based on Harvey's quantum meruit claim concerning several "improvements" to a farm. Harvey contends the district court erred in determining the date when interest would accrue for his quantum meruit claim and in valuing the improvements he made to the property. Jerome Noel cross-appeals contending that the claims for improvements done through 1968 should be barred pursuant to the statute of limitations of Iowa Code section 614.1(4). **REVERSED.**

Harold C. Lounsberry, Davenport, for claimant-appellant.

Michael J. McCarthy of McCarthy & Lammers, Davenport,
for defendant-appellee.

Considered by Donielson, P.J., and Schlegel and
Sackett, JJ.

DONIELSON, P.J.

Harvey Noel is the son of the decedent, Charles E. Noel. Harvey was a tenant on the Noel farm from 1963 until 1973. During this period, Harvey performed work and other services in making improvements on the farm.

Following a disagreement with his son, Charles sought to have Harvey's lease terminated and Harvey evicted in 1973. Charles died in July 1973 and on January 25, 1974, Harvey brought a claim against the estate to recover for improvements he had made to his father's farm. His petition set forth two bases in support of his claim; the first division was predicated on an alleged oral agreement to make improvements for his father; the second division was premised on an oral agreement with his father regarding his future inheritance and actions he took in reliance thereon. The litigation surrounding Harvey's claim has resulted in four prior decisions by our appellate courts. A brief review of these past decisions will clarify the status of the pending appeal.

Prior to his father's death, Harvey had filed an action for a declaratory judgment seeking to establish his right to a continuing tenancy and to purchase his father's property. After his father's death, his father's estate was substituted as defendant in the declaratory action. This court affirmed the district court's dismissal of Harvey's petition in 1977. Noel v. Noel, No. 2-57496 (Iowa

App. Sept. 9, 1977). In that decision we rejected Harvey's claim of equitable estoppel and affirmed the district court's finding that any claimed oral agreement merged into the subsequent written leases which existed between Harvey and Charles.

In April 1982, the district court dismissed Harvey's probate claim because it concluded the issue of whether work had been performed pursuant to an oral agreement had been litigated and conclusively decided in the prior declaratory judgment action. On appeal, the Iowa Supreme Court held the decision in the declaratory judgment action did not address the issue of whether an oral agreement existed between Harvey and Charles with regard to payment for improvements and repairs. Noel v. Noel, 334 N.W.2d 146, 149 (Iowa 1983). The case was remanded to the district court for further proceedings on Harvey's probate claim.

Subsequent to the supreme court decision, Harvey made an application to amend his probate claim to add a third division which is characterized as a claim for quantum meruit. Despite resistance from the estate, the district court allowed Harvey to amend his claim.

On May 7, 1984, the district court rendered a decision rejecting Harvey's probate claim. It found the statute of limitations had lapsed on the quantum meruit claim because it had not been filed within six months of the publication

of the second notice to creditors. Iowa Code § 633.410. The district court rejected Harvey's claim of an oral contract by finding no oral contract existed for improvements and repairs, and even if one had existed, it would have merged with the written leases.

On appeal this court cited Iowa Code section 633.444 (1985) and concluded Harvey's amended claim was not barred by the six-month filing limitation of section 633.410. Noel v. Noel, No. 84-1346 (Iowa App. Aug. 29, 1985). The case was remanded to the district court for further consideration of Harvey's quantum meruit claim.

On August 1, 1986, the district court again rejected Harvey's probate claim. Its decision rested on the premise that a quantum meruit claim is based upon the concept of implied contract and the written leases in this matter superseded the effects of any implied contract.

On appeal we reversed the district court's decision and found an implied contract and express lease may exist simultaneously. Noel v. Noel, No. 86-1337 (Iowa App. Oct. 28, 1987). We further found the written leases in this case did not encompass both repairs and improvements. We remanded the case and instructed the trial court to determine whether Harvey had a quantum meruit claim for improvements made to his father's property.

On remand, the district court found no proof of an oral contract existed but it found sufficient evidence did

support Harvey's claim of quantum meruit. It examined the record and concluded the estate should award Harvey \$8,900.38 for improvements he had made to his father's property. Harvey and the estate have both appealed from that decision.

In this, the fifth appeal in this case, we are presented with three issues. The estate claims Harvey's quantum meruit claim for repairs made between 1963 and 1968 is barred by the statute of limitations. Harvey denies his claims were time barred and argues the district court erred in valuing the improvements he made to his father's property. He also contends the district court erred in determining the date when interest would accrue.

A claim in probate is triable as a law action, Iowa Code section 633.33 (1989), thus our scope of review is for correction of errors at law. Iowa R. App. P. 4. Findings of fact made by the district court are binding on us if supported by substantial evidence. Iowa R. App. P. 14(f)(2).

Prior decisions by trial and appellate courts in this action have dismissed Harvey's claims based on oral contract (divisions I and II of his petition). At issue is whether his quantum meruit claim (division III of his petition) was timely filed. We have previously decided his right to amend his petition to add the quantum meruit claim was not barred by the six-month time limitation of section

633.410. Noel v. Noel, No. 84-1346 (Iowa App. Aug. 29, 1985). What we did not address in our prior opinion was whether Harvey's claim was untimely with regard to section 614.1(4). A claim may not later be brought against an estate if it was barred at the time of a decedent's death. See Iowa Code § 633.412.

An action predicated upon quantum meruit is one in which the law implies a promise to pay based upon the conduct of the parties. See In re Walton's Estate, 213 Iowa 104, 238 N.W. 577 (1931). Where no writing exists to show the existence of an obligation, an action urging the existence of such an obligation is subject to the statute of limitations founded on unwritten contracts. Matherly v. Hanson, 359 N.W.2d 450, 454 (Iowa 1984). The statute of limitations for unwritten contracts is five years. Iowa Code § 614.1(4) (1989). The shorter statute of limitations which exists for unwritten as opposed to written contracts, recognizes the undesirability of relying on parol evidence which frequently tends to become less desirable with the passage of time. Matherly, 359 N.W.2d at 457.

Harvey's quantum meruit claim for improvements made to his father's property falls within the five-year statute of limitations of section 614.1(4). His probate claim was not filed until January 25, 1974. His claim for all improvements made prior to January 25, 1969, was barred by the statute of limitations. The estate raised this defense

and the trial court erred in not dismissing Harvey's claims for improvements which accrued prior to January 25, 1969. From our review of the record, it is apparent items A-E set forth in the July 15, 1988, district court order encompassed improvements made prior to 1969. Aside from the merits of whether Harvey deserved to be reimbursed for those repairs, his delay in bringing an action for their recovery bars him now from any compensation. The judgment of the trial court awarding Harvey \$8,900.38 is hereby reduced to \$2,218.01 to exclude compensation for claimed improvements which were barred by the statute of limitations. We have examined Harvey's other claimed improvements and find the trial court adequately ruled in regard to their value and Harvey's right to reimbursement therefor.

A final issue which must be resolved is from what point does interest accrue in this action. The district court's order specified interest would run from December 9, 1985. This court finds no rationale for running interest from that date, and instead we order that the interest run from the date of the commencement of Harvey's action. Iowa Code § 535.3 (1989). Contrary to Harvey's arguments, we cannot find these claims were liquidated and that the interest should run from a date prior to commencement of his action.

In conclusion, the decision of the district court is reversed. The district court judgment is reduced to

\$2,128.01, and interest accrues from the date the action was commenced, January 25, 1974.

REVERSED.

Schlegel, J., concurs; Sackett, J., concurs in part and dissents in part.

SACKETT, J. (concurring in part and dissenting in part)

I concur in part and dissent in part. I would agree with the trial court on the quantum meruit claim. The claim was in essence an accruing account. Therefore, the statute of limitations would be determined from the date of the last payment or credit.

I agree with the majority in all other respects.