**IN THE COURT OF APPEALS OF IOWA**

No. 6-473 / 95-1700

000049

**IN THE MATTER OF THE ESTATE OF BURTON W. BOYES, Deceased,**

**WILLIAM B. BOYES,**

Plaintiff-Appellee,

**vs.**

**FRED J. BOYES, Executor of the Estate of Burton W. Boyes, Deceased,**

Defendant-Appellant.

FILED
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CLERK SUPREME COURT

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Appeal from the Iowa District Court for Dubuque County, William G. Klotzbach, Judge.

Defendant appeals a district court ruling awarding plaintiff $31,575 against the decedent's estate based on plaintiff's quantum meruit claim. **AFFIRMED.**

Angela C. Simon, David L. Hammer, and Scott J. Nelson of Hammer, Simon & Jensen, Dubuque, for appellant.

Michael J. Shubatt and Mark J. Willging of Fuerste, Carew, Coyle, Juergens & Sudmeier, P.C., Dubuque, for appellee.

Heard by Habhab, C.J., and Sackett and Cady, JJ.

**HABHAB, C.J.**

For over fifty years Burton Boyes operated an auto salvage business in Dubuque. In 1966, one of his sons, William, began working full-time in the business. In 1969, William began performing bookkeeping services for Burton. William had no experience but was tutored by a local accountant who showed him how to set up the books and maintain them. The bookkeeping consisted of maintaining the general ledger and daily sales journal, plus keeping records and preparing for state and federal sales taxes, unemployment taxes, and all reconciliation reports. The work was done manually.

In 1972, William obtained full-time employment with John Deere but continued performing bookkeeping and accounting services for Burton. William did not receive a wage for these services. William offered to let someone else take over these duties; however, he continued to perform them incompliance with Burton's wishes.

Burton Boyes died testate on March 1, 1993. William subsequently filed a claim against the estate for $35,400 for bookkeeping and accounting services rendered throughout the years. On July 26, 1993, the executor, Fred Boyes, denied the claim pursuant to Iowa Code section 633.439 (1993). William requested a hearing on the claim. On February 7, 1994, William amended his claim, indicating he was only seeking $31,575 for services rendered. The estate again disallowed the claim.

Following a hearing, the district court concluded William was entitled to $31,575 plus ten percent interest from the date the claim was made for accounting services rendered. Fred, as executor of the estate, has appealed.

The estate contends (1) William was already compensated for his work and his claim is merely an effort to obtain a share of his father's estate; (2) William's claim for quantum meruit is barred by the doctrine of laches; and (3) the district court failed to recognize William's claim was actually one for contract for will.

***I. Standard of Review.*** Our review of a claim in probate is typically for the correction of errors at law. *Tierney v. Lantz*, 505 N.W.2d 513, 514 (Iowa App. 1993). This is because claims in probate are tried as "ordinary actions." Iowa Code § 633.447 (1995); *In re Devine's Estate*, 255 Iowa 726, 123 N.W.2d 898 (1963). Nevertheless, a probate action may proceed in equity when the underlying claim is equitable in nature. *See Davis Eisenhart Marketing Co. v. Baysden*, 539 N.W.2d 140, 142 (Iowa 1995). When that is done, our review is de novo.

In the case before us, William seeks reimbursement for services rendered to Burton before his death. "Actions . . . for the establishment of contested claims shall be triable in probate as law actions." Iowa Code § 633.33. Our review, therefore, is for corrections of errors at law. *See Solbrack v. Fosselman*, 204 N.W.2d 891, 893 (Iowa 1973) (claim against estate for wages reviewed for correction of errors at law).

We are bound by the trial court's findings of fact if they are supported by substantial evidence within the record. Iowa R. App. P. 14(f)(1). We construe the trial court's findings broadly and liberally. *In re Estate of Lachmich*, 541 N.W.2d 543, 545 (Iowa App. 1995). In case of doubt or ambiguity we construe the findings to uphold, rather than defeat, the judgment. *Id.* Evidence is substantial when a reasonable mind could accept it as adequate to reach the same findings. *Id.* Evidence is not insubstantial merely because it could support contrary inferences. *Id.*

***II. Substantial Evidence.*** After careful review of the record, we find there is substantial evidence to support the conclusions of the trial court. The evidence supports the court's finding that William performed substantial accounting services at Burton's request. There were several occasions when William would offer to let someone else provide these services, but Burton expressed his satisfaction with William's performance and instructed him to continue.

"It is elementary that ordinarily where one person performs services for another which are known to and accepted by him, the law implies a promise to pay therefor." *In re Talty's Estate*, 232 Iowa 280, 283, 5 N.W.2d 584, 586 (1942); *see Heninger & Heninger v. Davenport Bank & Trust*, 341 N.W.2d 43, 47 (Iowa 1983). We agree with the trial court that the accounting services rendered by William for Burton were not those usually performed by one family member for another; therefore, there is not a presumption the services were gratuitous. *See id.*

Uncontroverted expert testimony of a licensed accountant, Thad Gaven, was presented at trial. Gaven reviewed the work completed by William and testified the services William performed were competent and his claim for compensation in the amount of $31,575 was reasonable. The value of services rendered to a decedent is an issue for the fact finder. *See Shoberg v. Rock*, 230 Iowa 832, ___, 298 N.W. 834, 836 (1941).

The estate claims William was fully compensated for his work by Burton. Fred testified at trial that William was paid forty dollars each time he came to perform the accounting services. However, Fred admitted he merely assumed this agreement existed and he had nothing on which to base that assumption.

We find substantial evidence within the record supports the trial court's award of $31,535 to William.

***III. Laches.*** The estate asserts William delayed in making a claim for compensation until Burton died to prevent him from personally defending the claim. The party asserting the affirmative defense of laches has the burden to establish its essential elements by clear, convincing, and satisfactory evidence. *Rowen v. Le Mars Mut. Ins. Co.*, 282 N.W.2d 639, 647 (Iowa 1979). The loss of material testimony is a factor we consider; however, it alone is not enough to establish laches. *Id.* Laches will be applied only when clearly demanded in the interests of justice and it is inequitable to permit recovery. *See id.*

After careful review of the record, we reject defendant's contentions in this regard. The estate has not established the defense of laches by clear, convincing, and satisfactory evidence. Although material testimony was lost with Burton's death, we find no inequity in permitting William's recovery.

*IV. Contract for Will.* On appeal, the estate contends William's claim was actually one of a contract for will. This allegation was not raised in the trial court and, as such, it has not been preserved for our review. *See Ward v. Loomis Bros. Inc.*, 532 N.W.2d 807, 812 (Iowa App. 1995) (issues not properly preserved at the trial court may not be raised for the first time on appeal). However, assuming arguendo the claim was preserved, we reject it as it is meritless.

**AFFIRMED.**