

IN THE COURT OF APPEALS OF IOWA

FILED

MAR 20 1984

CLERK SUPREME COURT

85

**MAYNES REAL ESTATE, INC. and
LOWELL OXLEY,**

Plaintiffs-Appellants,

vs.

**J. F. McPHERRON, WILLIAM C.
MILLER and MARILYN MILLER,**

Defendants-Appellees.

Filed March 20, 1984

3-434
83-578

Appeal from the Iowa District Court for Page County - Leo F. Connolly,
Judge.

Plaintiffs appeal from a judgment for defendants in an action seeking
recovery in quantum meruit for the reasonable value of services rendered in
connection with the sale of real estate. **AFFIRMED.**

Ronald D. Bonnett of Wilson, Bonnett & Christensen, Lenox, Iowa, for
plaintiffs-appellants.

Philip C. Armknecht of Reese & Armknecht, Red Oak, Iowa, for defendants-
appellees.

Plaintiffs appeal from a judgment for defendants in an action seeking recovery in quantum meruit for the reasonable value of services rendered in connection with the sale of real estate.

Plaintiff, Lowell Oxley, is a licensed real estate salesman employed by plaintiff, Maynes Real Estate, Inc., a licensed real estate broker. Defendants Miller owned three parcels of farmland consisting of an 80-acre tract, a 160-acre tract, and a 240-acre tract. Defendant McPherron managed the farms for the Millers who reside in Florida.

Oxley learned that the Millers were interested in selling their land and contacted McPherron about a listing. McPherron told Oxley that he intended to sell the land himself, but orally agreed to give Oxley a two and one-half percent commission if Oxley produced a buyer.

Robert and Richard Muff contacted Oxley about purchasing farmland. In December, 1979, Oxley drove the Muff brothers by several farms which were for sale, including the Miller farms. Shortly thereafter, when the Muff brothers showed an interest in the Miller land, Oxley got the key to the gate from McPherron and drove Robert Muff over the land. Oxley told Muff that McPherron was managing the farms and that they should contact him if they had any questions.

In January of 1980 the Muffs' interest in this land increased when other land they had seen became unavailable. They contacted McPherron and eventually negotiated a sale. Oxley was not involved in any of the negotiations. Although testimony at trial was conflicting, it is undisputed that McPherron knew that the Muffs had originally been shown the land by Oxley.

Plaintiffs instituted the present suit based on the oral contract between Oxley and McPherron for a two and one-half percent commission. After the supreme court handed down its decision in Milholin v. Vorhies, 320 N.W.2d 552

(Iowa 1982), the trial court sustained defendants' motion for summary judgment and dismissed both counts of plaintiffs' petition. Plaintiffs were allowed to amend their petition to allege a third count based on quantum meruit. After a trial to the court on the third count alone, the trial court held that Oxley was not entitled to any compensation because his efforts were minimal and did not contribute to the sale of the land.

Although the issue is not raised by either party, there is a question as to the appropriate scope of review of the appellate court. This case asserts an equitable theory, but it was filed as an action at law, was tried at law, and seeks money damages. We, therefore, review this case on assigned error. Iowa R. App. P. 4.

Generally, a realtor is entitled to a commission if the realtor produces a purchaser to whom a sale is in fact made or produces a purchaser ready, willing, and able to buy on terms specified in the agency agreement even if no sale occurs. Gatton v. Stephen, 239 N.W.2d 159, 161 (Iowa 1976). The cases show that the realtor need not participate in the negotiations as long as he introduces the prospective buyer and seller and the negotiations proceed without abandonment until the sale is made. Morton v. Drichel, 237 Iowa 1209, 24 N.W.2d 812 (1946); Moore v. Griffith, 234 Iowa 1024, 14 N.W.2d 644 (1944). See also Gaudio, The Iowa Law of Real Estate Brokerage, 30 Drake L. Rev. 437, 471 (1980-81).

The Iowa Real Estate Commission, however, has promulgated Rule 1.23, found in chapter 700 of the Iowa Administrative Code, which provides:

All listing agreements shall be in writing, properly identifying the property and containing all of the terms and conditions under which the property is to be sold, including the price, the commission to be paid, the signatures of all parties concerned and a definite expiration date. It shall contain no provision requiring a party signing the listing to notify the broker of his intention to cancel the listing after such definite expiration date.

In Milholin v. Vorhies, 320 N.W.2d 552 (Iowa 1982), the supreme court upheld Rule 1.23 and likened it to a statute of frauds. The court concluded that oral listing

agreements are unenforceable upon proper objection. Id. at 554. While the court reserved the question of whether a broker who had performed services under an unenforceable agreement could recover upon another theory, it cited authority which indicated that recovery was prohibited under any theory. Id. The question was not answered in the recent case of Rodgers v. Baughman, ___ N.W.2d ___ (Iowa 1983) (filed December 21, 1983), which discussed the specificity required for a writing to comply with Rule 1.23.

It has generally been held in other jurisdictions that a broker cannot recover in quantum meruit, quasi contract, or implied contract when the brokerage agreement does not satisfy a statute or rule requiring such agreements to be in writing. Valkama v. Harris, 575 P.2d 789, 792 (Alaska 1978); Gerardot v. Emenhiser, 173 Ind. App. 353, 363 N.E.2d 1072, 1077 (1977); Isaguirre v. Echevarria, 96 Idaho 641, 534 P.2d 471, 474 (1975); Sherman v. Bruton, 497 S.W.2d 316, 321 (Tex. Civ. App. 1973); Ekelman v. Freeman, 350 Mich. 665, 87 N.W.2d 157, 159-60 (1957). See also Restatement (Second) of Contracts § 375, Illustration 3 to Comment a (1979); Restatement (Second) of Agency § 468, Comment on Subsection (2) (1958); Annot., 41 A.L.R.2d 905 (1955); 12 Am. Jur. 2d Brokers § 53 (1964). The rationale relied on for this position is that allowing recovery on an oral brokerage agreement under quantum meruit would completely frustrate the rule requiring such agreements to be in writing.

We adopt the majority rule and hold that it is controlling in this case. Oxley, as a professional, was undoubtedly aware of Rule 1.23. To allow him to recover would encourage brokers to flagrantly disregard the writing requirement. Since this result is necessary to preserve the purpose of Rule 1.23 and the Milholin decision, we hold that where a broker's agreement does not comply with Rule 1.23, the broker is not only precluded from recovery on the contract, but is also precluded from subverting the rule by recovery under quantum meruit.

In the present case both parties and the trial court apparently assumed that quantum meruit was an appropriate theory of recovery. However, the trial court denied recovery to the plaintiffs on the grounds that their services were inconsequential. We affirm a correct result of the trial court even though its decision is based on reasoning different from our own. Wilkinson v. County Board of Education, 251 Iowa 876, 879, 102 N.W.2d 924, 926 (1960).

AFFIRMED