FILED
DEC 1 7 1987
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

EULA HERDLISKA,

Claimant-Appellant,

vs.

THE ESTATE OF JOHN H. ROGGENTIEN, FRANCES RITCHIE and **HAROLD J. ROGGENTIEN,** Fiduciaries of the Estate of John H. Roggentien,

Defendants-Appellees.

Filed December 17, 1987

127

FRANCES RITCHIE and **HAROLD J. ROGGENTIEN,** Fiduciaries of the Estate of John H. Roggentien, and **HAROLD J. ROGGENTIEN,** Individually,

Plaintiffs-Appellees,

vs.

EULA HERDLISKA,

Defendant-Appellant.

7-385
86-1323

Appeal from the Iowa District Court for Iowa County (No. 15908), William R. Eads and Harold J. Swailes, Judges.

Eula Herdliska appeals from two consolidated cases wherein (1) Herdliska's claim for services rendered as a housekeeper and nurse was dismissed against the estate of John Roggentien and (2) Herdliska was ordered to give immediate possession of the house in which she lived to the estate. **REVERSED IN PART AND AFFIRMED IN PART.**

Linda H. Robbins of Hall & Irvine, Cedar Rapids, for appellant.

Lewis C McMeen of Harned, McMeen & Wagner, Marengo, and Thomas D. Hobart of Meardon, Sueppel, Downer & Hayes, Iowa City, for appellees.

Heard by Oxberger, C J , and Donielson and Sackett, JJ

DONIELSON, J.

Eula Herdliska appeals from two consolidated cases wherein (1) Herdliska's claim for services rendered as a housekeeper and nurse was dismissed against the estate of John Roggentien and (2) Herdliska was ordered to give immediate possession of the house in which she lived to the estate. We reverse in part and affirm in part.

In 1970 Eula Herdliska, who was then thirty-seven years old, began to live in the house of John Roggentien, an elderly widower. Herdliska served as a housekeeper, cook, and companion to Roggentien. She received her room and board, but little, if any, monetary compensation. She asserts that Roggentien induced her to move into his house by promising to leave her the house and $5,000 in life insurance proceeds upon his death.

Roggentien died in 1985 at the age of eighty-six without having taken any steps to leave the house or life insurance proceeds to Herdliska. Herdliska later filed a claim against his estate, seeking either specific performance of the alleged oral contract to transfer the house to her, or money damages based on theories of detrimental reliance, estoppel, and constructive trust. Her claim against the estate also sought compensation for services and food furnished to Roggentien during his life in the amount of $10,864.22. The district court dismissed Herdliska's claim against the estate, and she has appealed.

In a related proceeding, the estate filed an action against Herdliska to recover possession of the house in question. The district court ruled in favor of the estate in this action, and Herdliska has appealed from that ruling. Herdliska's two appeals have been consolidated.

Herdliska's action against the estate is in equity. Our scope of review is de novo. Iowa R. App. P. 4.

Herdliska contends the district court erred by holding that her evidence of an oral contract was barred by the statute of frauds. She contends the statute of frauds does not apply to this oral contract because the purchase money or a portion thereof had already been received by the vendor; she argues that her performance of services for Roggentien constituted "purchase money." Herdliska also contends the district court erred by holding that the evidence was not sufficient to prove the alleged oral contract. She asserts the evidence proved both the existence of the oral contract and her performance of it. Because we find Herdliska entitled to recover under an alternative theory, we do not address these contentions.

Herdliska contends the evidence established that she was entitled to recover under the alternative theories of implied contract or constructive trust based on unjust enrichment or detrimental reliance. She argues the district court erred by holding she had not met her burden to prove recovery under these theories.

The elements of promissory estoppel are (1) a clear and definite oral agreement, (2) proof that the party urging the doctrine acted to his detriment in relying on the agreement, and (3) finding that the equities support enforcement of the agreement. Warder v. Lee Elevator, Inc. v. Britten, 274 N.W.2d 339, 342 (Iowa 1979). Roggentien argues that the statute of frauds is a bar to the conveyance of the house to Herdliska since there is no signed writing. See Iowa Code § 622.32. We have long recognized promissory estoppel as a means of defeating the general statute of frauds in Iowa Code section 622.32. Id. The issue in determining whether promissory estoppel applies is whether one has acted to his detriment in reliance upon the promise of another, and it is immaterial whether that promise was unilateral or bilateral. Id.

A *de novo* review of the record leads us to conclude Herdliska is entitled to recovery based on her theory of promissory estoppel and detrimental reliance. For fifteen years Herdliska lived with Roggentien and cleaned house, prepared meals, washed dishes, did the laundry, did the gardening, did the chauffeuring, and did the grocery shopping. In 1983, after Roggentien became ill, Herdliska bathed him, washed his hair, shaved him, soaked his feet, and cared for him. During this time, Roggentien required two canes to move about the house. Until 1980 Herdliska and Roggentien had received food stamps. In 1980, Herdliska took outside work; she then paid the water bill, had a telephone put in, and paid for groceries and some other miscellaneous expenses. Herdliska testified that Roggentien promised her the house and a $5,000 insurance policy, in addition to giving her cigarette money, if she would live with him and keep house for him and that he desired Herdliska to keep her outside employment to maintain the house. While Herdliska received free rent, she received little, if any, other compensation from Roggentien.

The trial court placed emphasis on the fact that Herdliska's duties benefited her as well as decedent. The court also made reference to the fact that Herdliska "probably could not have been able to support herself and to pay her normal living expenses" and hence her services to Roggentien "did not exceed the value of the free rent, utilities, and groceries she received." The trial court also noted that Herdliska "did not give up a high-paying job to work for the deceased," had no training for a skilled job, and, because Herdliska was single with deceased parents, she did not give up family living to reside with Roggentien. The court apparently felt that Herdliska's living rent-free was as much as she was entitled to or worthy of since she was not a "skilled" person. The trial court additionally stated Herdliska "did not really render nursing services."

We disagree with the trial court's reasons and find them to be unsupported by the evidence. The record shows she has employable qualities, such that she was not destitute to work for this elderly gentleman and be "lucky" enough to receive free room and board. We cannot believe Herdliska's actions were strictly gratuitous on her part, as Roggentien's estate would have us believe. The trial court found Herdliska's services performed by her "do admit of explanation without reference to an oral contract" but found that Herdliska "had not established that the value of her food and services was greater than the value of the free rent, utilities, and groceries in early years received by the Claimant from the decedent and the free rent that she continued to receive." We also find Herdliska's many duties to Roggentien to be valued at more than the free rent, utilities, and groceries she may have received. We note, first of all, there was no evidence offered by the estate as to the value of the free rent, utilities, and groceries. Herdliska's expert from Voluntary Hospitals of Iowa testified the cost of a private duty homemaker living in the home of an elderly person would be $60 per day, with the live-in person receiving only $32 per day of that amount. Using the most conservative figure of $32 per day, Herdliska would be entitled to $11,680 for just one year's service. We think Herdliska's rent, utilities, and groceries would be valued at substantially less than $11,680. We find there to be a reasonable implication of a promise to give Herdliska the house due to her fifteen years of care of Roggentien.

We find the elements of promissory estoppel have been proved by Herdliska. The record establishes there was some sort of agreement between Herdliska and Roggentien to induce her to perform the multitude of services she rendered to Roggentien. Herdliska acted to her detriment in relying on the agreement as demonstrated by facts recited earlier in this opinion. The equities in this case support enforcement of this agreement.

Herdliska asks that the house be conveyed to her or, in the alternative, money damages. Legal title and possession of the house is in the estate. The only available sources for the measure of damages are the proceeds of the life insurance policy of which Harold Roggentien was made beneficiary and the real property of the estate valued at approximately $17,000. The insurance policy, we note, was given away during Roggentien's lifetime. Herdliska testified she realized she would not receive this amount. We order the house sold with the proceeds remaining after payment of funeral and administration expenses to go to Herdliska. Because of our ruling, we need not address Herdliska's other issue on appeal that the district court erred in ordering her to turn over possession of the house immediately to the estate.

REVERSED IN PART AND AFFIRMED IN PART.