IN THE COURT OF APPEALS OF IOWA

No. 1-579 / 91-878

FILED
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CLERK SUPREME COURT

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GERALD V. DAVIS,

Appellant,

vs.

ROYLENE A. SEYMOUR,

Appellee.

Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul, Judge.

Davis appeals from a district court judgment denying his claim for damages for services he performed for Seymour. **AFFIRMED.**

Wil L. Forker of Forker & Kanter, Sioux City, for appellant.

Robert J. Rehan, Sioux City, for appellee.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ.

OXBERGER, C.J.

In October 1986 Gerald met Roylene. Gerald was essentially without assets while Roylene had considerable real estate and other assets. In February 1987 Gerald moved in with Roylene. From 1987 Roylene acquired additional rental properties. During this period, Gerald worked on several of the properties rehabilitating, repairing, and maintaining them. He never asked for any money during this time nor entered into any written partnership agreement concerning the properties with Roylene. In June 1990 Roylene forced Gerald out of her house. In August 1990 Gerald filed this lawsuit in two counts. The district court rejected Gerald's claims and denied him recovery. Gerald filed this appeal. We review for corrections of errors at law. Iowa R. App. P. 4. The trial courts findings of fact have the force of a special verdict and are binding on this court if supported by substantial evidence and justified as a matter of law. Iowa R. App. P. 14(f)(1).

PARTNERSHIP: We first consider whether the trial court erred in finding no partnership relationship existed between Gerald and Roylene. Gerald argues the parties had formed a partnership concerning the rental properties and he should be entitled to a portion of the profits. A partnership is an association of two or more persons to carry on as co-owners of a business for profit. Iowa Code

§ 544.6. To establish a partnership, proof must be clear, satisfactory and convincing. Miller v. Miller, 89 N.W.2d 871, 874 (Iowa 1958).

The trial court determined a partnership did not exist. Profit and income was not divided between Gerald and Roylene. Likewise, losses were not divided. No partnership agreement existed between the parties. We affirm the trial court on this issue.

QUANTUM MERUIT: Gerald next asserts the trial court erred in denying him recovery under the theory of quantum meruit. He argues Roylene was unjustly enriched. We disagree.

When a person performs services for another at the latter's request, the latter is liable for the services unless there are special circumstances such as a family relationship indicating a gratuity was intended. See Heninger & Heninger v. Davenport Bank & Trust, 341 N.W.2d 43, 47 (Iowa 1983). The trial court found neither Gerald or Roylene expected Gerald was to be paid for the services he rendered. Gerald never demanded compensation from Roylene for a period of over three years. There is no indication Roylene asked Gerald to do the work. It was not until this couple broke up their relationship that Gerald sought payment for his services. In February of 1987, Gerald moved into Roylene's home. Roylene worked earning income continuously during the relationship. Gerald was

not employed during the relationship. Gerald lived with Roylene in her home until June 19, 1990, and all his living expenses, including vacations and trips, were furnished by Roylene. Under the circumstances of this case, what work was done by Gerald cannot be said to have unjustly enriched Roylene. We affirm the trial court.

Each party will pay his or her own attorney's fees. Costs are taxed to the appellant.

AFFIRMED.