

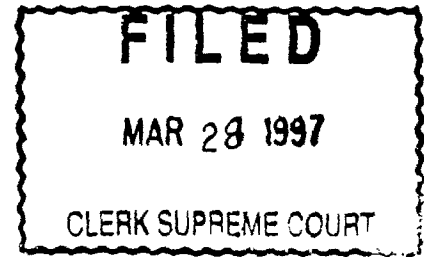
IN THE COURT OF APPEALS OF IOWA

No. 6-715 / 96-0033

IN THE MATTER OF THE ANCILLARY ESTATE
OF MELVENE DRAHEIM HARDEE, Deceased,

NEWT DRAHEIM,

Appellant.



Appeal from the Iowa District Court for Wright County, William H. Joy,
Judge.

Newt Draheim appeals a district court ruling denying his claim against the
estate of his sister. **AFFIRMED.**

Mark McCormick of Belin Harris Lamson McCormick, P.C., Des Moines, for
appellant.

Larry Ivers, Eagle Grove, for appellee Estate.

Heard by Huitink, P.J., and Streit and Vogel, JJ. Habhab, C.J., and Cady, J.,
take no part.

PER CURIAM

Melvane Draheim Hardee died testate on December 16, 1994. Hardee had executed her will on April 26, 1994, soon after she discovered she had terminal cancer. She was born and raised in Clarion, Iowa, but was a long-time resident of Tallahassee, Florida. Her will was admitted to probate in Florida, with ancillary administration in Iowa.

Hardee's brother, Newt Draheim filed a claim in the Florida probate court on June 15, 1995 (as amended on July 19, 1995) for the money in Hardee's Florida checking account. Draheim alleged an oral contract was entered into between Hardee and Draheim on December 14, 1994, just two days before Hardee's death. The basis for his claim was, "in consideration of services performed and to be performed by [Draheim]."

Background. In early December 1994, Draheim and his wife drove to Hardee's house upon word that Hardee was very ill. She told Draheim she wanted to die back in Iowa. Draheim flew Hardee back to Iowa, to accommodate her request. While in Chicago on a layover, Hardee told Draheim, "Newt, I'm going to take care of you tomorrow when we get to Clarion."

The following morning, Hardee's condition deteriorated. While in the Clarion hospital, she met with Draheim and his wife. At trial, Draheim testified that Hardee told him, "for all you have done and all these years helping me on the farm and

for what I want you to do afterwards, and that's manage the farm until it's sold, and the funeral and we will get into that later, I want to offer you the money in this account. Would that be acceptable?" Draheim replied, "Yes, I would accept that." Hardee then handed Draheim her checkbook from a Florida bank and said, "You will be needing this." Draheim did not know the balance of the account at that time.

Draheim subsequently attempted, by telephone, to have the Florida account changed to a joint tenancy account. However, the Florida bank refused to change the ownership of the account until Hardee had signed a new signature card. By the time the signature card arrived in the mail, Hardee had passed away. No portion of the account was ever transferred to Draheim.

Draheim claims that Hardee's attempt to transfer the ownership of her checking account was a term of an express contract to pay him for past and future services. He maintained Hardee had, over the course of some thirty years, expressed an intention to pay him primarily for consulting with her regarding the operations of a tree farm she owned in Georgia. The district court denied the claim, finding among other things, any possible express contract did not contain terms which were sufficiently defined to be enforced.

Draheim appeals.

Scope of review. As this is a law action our review is not de novo but only on errors assigned; the trial court's findings of fact are equivalent to the special verdict of a jury and if supported by substantial evidence they will not be disturbed. *Frantz v. Knights of Columbus*, 205 N.W.2d 705, 708 (Iowa 1973). This does not preclude inquiry into whether the trial court applied erroneous rules of law which materially affected its decision. We are not bound by the trial court's determinations of law. *Farmers Ins. Group v. Merryweather*, 214 N.W.2d 186, 187 (Iowa 1974).

Express contract.

I. Draheim claims he and his sister entered into an express contract on December 14, 1994. Hardee had inherited 1000 acres of farm land in Georgia in 1963, following the death of her husband but did not know what to do with the land. Draheim, knowing that his sister did not have a lot of funds, agreed to help her. From time to time Hardee said she would “pay him” or “take care of him later”. The help he provided varied from the initial consultation to advise on the use of the farm to somewhat irregular phone contacts with Hardee, regarding the operations of the farm. Occasionally over the years, Draheim visited the farm to assist in managing a specific problem. However, from 1970 to 1989 Draheim's involvement decreased while he was serving as an Iowa District Court judge. After he retired and went on senior judge status in 1991, Draheim increased his consultations with Hardee.

The trial court found that Hardee's failure to follow through with payment and Draheim's failure to demand payment over the course of thirty years negated the finding of an contract. These are additional requirements of proving a contract not supported by the law. The only required elements of a binding contract are mutual assent to the contractual terms manifested by an offer and acceptance. *Kristerin Dev. Co. v. Granson Inv.*, 394 N.W.2d 325, 331 (Iowa 1986).

An express contract is one where the intention of the parties as well as the agreement terms are expressed or declared by the parties, in writing or orally, at the time the parties enter the contract. *Thompson Yards v. Haakinson & Beaty Co.*, 209 Iowa 985, 229 N.W. 266 (1930). In order to find the existence of an express oral contract, there must be "sufficient evidence of its terms to ascertain the duties and conditions established." *Audus v. Sabre Communications Corp.*, 554 N.W.2d 868, 871 (Iowa 1996). See also *Bowser v. PMX Indus., Inc.*, 545 N.W.2d 898, 899 (Iowa App. 1996).

We now look to what terms, if any, were agreed upon by Hardee and Draheim, establishing the contract obligations. For thirty years Draheim consulted with his sister regarding her farm and occasionally she would say she would pay him. Years went by. No terms of any agreement were discussed and nothing established conditions relative to performance.

On the claim form, submitted by Draheim to the Florida probate court, under the heading "Items Given and Transferred Before Death" was the following:

The following items were *given* to Newt Draheim by Dr. Hardee on December 10 & 11, 1994:

On December 14, 1994, Dr. Hardee wanted me to be a Joint Tenant with Right of Survivorship of her checking account at the First National Bank in Tallahassee. (Emphasis added).

This language implies Draheim characterized the checking account as a gift. No assertion of contractual obligation between Hardee and Draheim accompanied this claim.

The trial court characterized Hardee's deathbed offer of her checking account to Draheim as a "reward" for her brother helping her. While Draheim "accepted" her offer, he did not know the amount of money in her account. For all those years, no specific expectations were set out for Draheim and no payment was ever established. There was no mutuality of obligation, a requisite for an enforceable contract. *See* 17 C.J.S. *Contracts* § 1(2) (1963).

We do not find as the trial court did that an actual transfer of the account was necessary to establish Hardee's obligation to pay Draheim. Nor do we find an absence of collection efforts by Draheim defeated an express contract. We find the terms were simply deficient to rise to the level of an enforceable contract. For an oral contract to be found and enforceable, the terms must be so definitely fixed so that nothing remained except to reduce the terms to writing. *Daughton v. Parson*, 423 N.W.2d 894, 898 (Iowa App. 1988) (citing *Marti v. Ludeking*, 193 Iowa 500, 503-04, 185 N.W.2d 476, 477-78 (1921)). The assets in the checking account could therefore

not be offered as delayed payment for an obligation which had accrued over thirty years as no specific, contractual obligation with terms of performance and payment existed. We find Hardee's offer of giving Draheim the unknown amount in her checking account, for what he had done over the course of thirty years, is not an enforceable contract.

II. The second part of Hardee's deathbed statement was "...and for what I want you to do afterwards, and that's manage the farm until it's sold..." The difficulty in trying to construe this as a term of an contract is that according to Draheim's testimony and prior claim in the Florida probate court, Hardee and Draheim already had an agreement covering this service. Draheim' claim in the Florida probate court, under the heading of "Contractual Items" stated:

After Dr. Hardee was informed of her cancer at Mayo Clinic, Rochester, Minnesota, in October 1993, it was by agreement with her that I manage the farm *pending final disposition*; and that I was, among other things, to supervise the present employee, Floyd Crawford. In 1994, I assumed these duties. (Emphasis added)

This contract claim, which contained other itemized expenses, was filed and paid out of the estate. Therefore, no new obligation, beyond "pending final disposition," was created on December 14, 1994

In summary, the two items Hardee attempted to compensate Draheim for in the deathbed dialog were for past service, "all that you have done and all these years helping me on the farm" and future service, "for what I want you to do afterwards, and that's manage the farm until it's sold." We agree with the trial court that any

reading of a contractual obligation from those words for past services fails for want of specificity in the terms. A contract for future services also fails as that was already contracted for, as evidenced by Draheim's claim, previously filed and paid, in the Florida probate court.

Implied contracts. Draheim contends that he "alternatively sought and was denied recovery on an implied contract theory." Nothing in his claim or amended claim in probate pleads recovery on an implied contract theory. His testimony also fails to advance this alternate theory. Issues not presented in the trial court may not be raised for the first time on appeal. *Conner v. State*, 362 N.W.2d 449, 457 (Iowa 1985).

Upon careful review of the entire record, we find substantial evidence to affirm the trial court's finding that no contract existed.

AFFIRMED.