2018 IL App (2d) 170842-U
No. 2-17-0842
Order filed May 9, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

CHICAGO YOUNG AMERICANS AMATEUR HOCKEY ASSOCIATION,	)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellee,	)	
v.	)	No. 15-CH-2117
ROBERT HUTSON,	)	Honorable Margaret A. Marcouiller,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant failed to preserve for review the trial court's denial of his motion for a directed finding at the close of plaintiff's case, because he chose to present a case-in-chief. Additionally, defendant improperly raised a new theory in his motion to reconsider, and, in any event, his new theory fails on the merits.

¶ 2 Plaintiff, the Chicago Young Americans Amateur Hockey Association (the association), brought a *quantum meruit* action against defendant, Robert Hutson, a director at the association. The action went to a bench trial. At the close of the association's case, Hutson moved for a directed finding under section 2-1110 of the Code of Civil Procedure (735 ILCS 5/2-1110 (West 2016)). The trial court denied the motion, and Hutson presented his case. The court ruled in

favor of the association, ordering Hutson to pay $37,250. Hutson now appeals the court's denial of his motion for a directed finding. We must reject Hutson's appeal, because: (1) he failed to preserve the issue for review by presenting a case-in-chief; (2) he improperly raised a new theory in his motion to reconsider; and, in any event, (3) his new theory fails on the merits.

¶ 3 I. BACKGROUND

¶ 4 The association is one of only four, tier-one, triple AAA hockey programs in Illinois. Its teams are for children, here boys, ages 9 to 18. The teams are organized by birth year. Only 16 to 20 spots are available for each birth year. The teams travel across the country, where they play against other elite teams, such as Shattuck St. Mary's in Minnesota. As many as 50 college scouts have attended certain league tournaments, which are considered a prime opportunity to view the best young talent in the nation.

¶ 5 Jason Ori is the president of the association. In that role, his monthly salary has ranged from $8,000 to $9,000. Under him, there are several paid directors and coaches.

¶ 6 Hutson, a former professional hockey player, worked as a director between April 2013 and November 2015. In that role, his monthly salary began at $5,900 and increased at a predetermined rate to $6,700. Additionally, he earned a $3,500 bonus each time an association team ranked in the top five nationally. His duties included consulting with the association's board to advise it on running an elite hockey program. He was to interact with coaches, volunteers, and parents; attend tryouts to ensure a fair selection of players; attend signing meetings with the parents of the selected players; and attend league and USA Hockey events to promote the association. He had the sole discretion to determine the location, hours, and methods used to accomplish his duties. He was free to obtain outside employment, so long as there was no conflict of interest.

¶ 7 Hutson and Ori memorialized the terms of Hutson's directorship, as described above, in an April 8, 2013, signed agreement. The agreement could be terminated by either party with 14 days' written notice. The agreement's final paragraph stated: "This agreement embodies the entire agreement between the parties with respect to its subject matter, and it supersedes all prior agreements, whether written or oral."

¶ 8 During the time that Hutson served as director, two of his four sons skated on association teams. They had to try out, like everyone else. As we will discuss below, according to Hutson, he and Ori had agreed that the boys would skate for free as a perk of his directorship. According to Ori, the idea had been raised but rejected during negotiations. Also according to Ori, Hutson repeatedly put off payment, explaining that he needed more time to procure the funds.

¶ 9 On November 20, 2015, Ori served Hutson a written termination notice. Separately, Ori continued to pursue payment for the boys' participation in the hockey program. Ultimately, the association's third amended complaint for *quantum meruit* went to a bench trial. The four elements of a *quantum meruit* claim are: (1) services were performed for the benefit of the defendant; (2) the services were not gratuitous; (3) the defendant accepted the services; and (4) no express contract existed to prescribe payment of services. *Installco Incorporated v. Whiting Corp.*, 336 Ill. App. 3d 776, 781 (2002).

¶ 10 A. Trial

¶ 11 At trial, the parties stipulated that, generally, all parents sign a financial responsibility agreement/player contract. The financial agreement obligates the parents to pay a standard rate for their sons' participation in the program. The standard rate ranges from $7,000 to $8,000 per season, per child, based on birth year. Hutson's sons played during three seasons between 2013 and 2016. The standard rates for their participation totaled $37,250.

¶ 12 1. The Association's Case and Hutson's Motion for a Directed Finding

¶ 13 Ori testified to the lack of an express contract covering the Hutson boys' participation. He initially "believed" the association's treasury department had handled Hutson's financial agreement and that Hutson had signed it. Ori acknowledged that Hutson did not sign the agreement(s), however, by attaching to the complaint an unsigned copy of the 2015-2016 agreement for the older Hutson boy. The unsigned agreement was never introduced as evidence.

¶ 14 Ori also testified to the non-gratuitous nature of the skating services provided. Ori and Hutson negotiated the terms of Hutson's directorship. The process went "pretty smooth." Hutson had come from "a distressed situation [in his] previous organization." Moving forward, he had very specific income requirements. He did raise the possibility of his kids skating for free. However, that term was not included for two reasons: (1) Hutson wanted as much income as possible; and (2) only one of his four boys was of playing age at that time. The signed written contract for Hutson's directorship duties and compensation did not mention his children or any perk for the benefit of his children.

¶ 15 Over the last four years, several directors and coaches have had children in the program. These men, some of whom Ori referred to by name, typically wrote a check in full for the standard rate on day one. However, "a few" directors and coaches with children in the program have had trouble paying the player fee. E-mails and reminder invoices usually corrected the problem, but one other case resulted in a lawsuit.

¶ 16 In Hutson's case, his older son tried out for, and made, the peewee minor team for the 2013-2014 season. The season started in September 2013, five months after Hutson began as director. Hutson again raised the issue of his son playing for free, but Ori never agreed. Hutson was "fine with it," but he never paid. Hutson "always" said: "I will take care of it, I am having

money problems, I will pay, just be patient." Ori was patient. Hutson did not pay for that 2013-2014 season, but Ori let the older boy play in the 2014-2015 season. He also let the younger boy play in the 2014-2015 season, and he let both boys continue to play in the 2015-2016 season. Even after he terminated Hutson's directorship in November 2015, he let the boys finish the 2015-2016 season while the family remained financially indebted to the association. He believes it is "very harsh" to kick a boy off of the team for his parents' lack of payment. Ori has never removed a boy from an association team due to his parents' lack of payment. Instead, the association's treasury department sends invoices, phone calls, and certified letters. Typically, Ori does not personally handle these matters. Ori did, however, talk with Hutson, "like two men, two human beings." Hutson promised payment, and Ori "believe[d] [he] would do right."

¶ 17 Ori described the Hutson boys as "nice, sweet kids" and "good students." They are very strong skaters, and their skating improved while in the program.

¶ 18 At the close of the association's case, Hutson orally moved for a directed finding. He focused exclusively on element two, arguing that the association had not set forth evidence to show that the services were not provided gratuitously. Hutson's theory of the case was that the association provided the services gratuitously, as a job perk of his directorship.

¶ 19 The court denied the motion. The court stated that there was "certainly" evidence to support that the services were not gratuitous. Hutson had stipulated that, typically, parents signed a financial agreement when their boys made the team. Further, Ori credibly testified that Hutson asked Ori to "be patient" and assured Ori that he would "take care of it." This demonstrated that Hutson knew the services were not gratuitous.

¶ 20 2. Hutson's Case and the Trial Court's Ruling

¶ 21 Hutson next presented his case. He testified that Ori wanted him to work for the association, in part so that his boys would play for the association. Even compared to their teammates, they were talented players. Hutson's boys raised the level of play. (However, on cross-examination, Hutson acknowledged that the association had won nine national titles before he or his boys became involved in the association.) Hutson's boys could have played free for another team, but it would "look bad" if they did not play for the association that he directed. Hutson also coached "multiple" association teams. Hutson expected that his boys would play for free.

¶ 22 The parties negotiated the terms of the directorship for about two months. Hutson "browsed" the directorship agreement before signing. Hutson noticed that his bonus pay was not as high as previously discussed, so the parties amended the amount and initialed the amendment. Hutson did not notice the absence of any clause pertaining to his boys or their skating.

¶ 23 It is part of hockey culture that directors and coaches' children play for free. Hutson has never before paid for his sons' hockey. He knows several other coaches whose children play for free. Every coach has a different arrangement. Some coaches earn "hundreds of thousands of dollars" per year. Those coaches typically pay. Other coaches do not have the ability to pay, and their children are an asset to the team. Those coaches typically do not pay. Skating for free was a job perk.

¶ 24 During the time that he served as director, Hutson never signed a financial agreement and he never received an invoice.

¶ 25 Hutson believed the association fired him because he blew the whistle on suspicious transactions flowing out of the association. The association fired him via e-mail three minutes after he asked about the transactions. After he was terminated, he received the invoices for the

three prior seasons. It was not until then that the association pursued payment for the three prior seasons.

¶ 26 To Hutson's knowledge, no child has ever been removed from an association team for lack of payment. In his role as director, Hutson often had found such boys a benefactor.

¶ 27 Hutson currently works for a different hockey organization. Three of his boys skate in the program. He has a verbal agreement with the new organization that his boys will skate for free. He has worked in coaching roles for 19 years, and, during the years in which his boys were of skating age, he has never paid.

¶ 28 In closing argument, Hutson stated: "I understand there was no contract." Rather, he again focused only on element two: whether the services were gratuitous. Hutson tried to undermine Ori's credibility by pointing to the absence of a signed financial agreement and/or invoices. Ori testified that he "believed" Hutson had signed the relevant financial agreements and the association sent Hutson invoices over the years in attempt to collect money, yet Ori did not introduce those documents into evidence. Hutson urged that those documents did not exist and that, instead, he had been enjoying a standard perk for three years until "outside events" led to his termination, and the association decided at that time to try to recoup three years of fees.

¶ 29 The court ruled in favor of the association. It declined to comment on why the parties' business relationship deteriorated, only to say that it "ended badly." It found credible Ori's testimony that, when outstanding fees were discussed, Hutson responded: "I will take care of it, be patient." It noted that Hutson never objected to or directly addressed this testimony. It rejected Hutson's theory that he had been enjoying a job perk for three years. It explained that Hutson had entered into a written contract detailing his duties and compensation as director. Nowhere did the directorship contract mention Hutson's children or any perks to be given to

them. Moreover, its final paragraph stated: "This agreement embodies the entire agreement between the parties with respect to its subject matter, and it supersedes all prior agreements, whether written or oral." The court concluded: "It may be true that other programs allow directors and coaches' kids to participate for free. If that is an important term to be negotiated, it should be written in a contract if there is one." The court ordered Hutson to pay the association $37,250, which reflected the standard fees over the relevant seasons.

¶ 30 B. Motion to Reconsider and Reopen Proofs

¶ 31 Hutson, under new counsel, moved to reconsider and reopen proofs, raising two new theories. First, he again contended that the services were gratuitous, but he argued that the agreement to waive monetary payment was in exchange for his duties as *coach*, not in exchange for his duties as *director*. He pointed to the directorship contract, which did not list coaching as a duty. Coaching was separate from directing. He noted that coaches typically received monetary payment, but he did not receive monetary payment for any of the 15 teams he coached during his three-year involvement with the association. He understood that he did not receive payment, because his boys were skating for free. He averred to this in an affidavit. The court rejected the argument, noting that parties cannot raise new theories for the first time in a motion to reconsider.

¶ 32 Second, he argued, in complete contradiction to his theory at trial, that a written contract prescribing fees for the standard rate existed. Thus, the association had not met the fourth element of a *quantum meruit* action, whether an express contract existed, and the court had erred in denying his motion for a directed finding. He pointed to an unsigned financial agreement given to all parents at tryouts, which had his older son's name on it, and which had been attached

to the association's *quantum meruit* complaint but not introduced as evidence. He also pointed to Ori's testimony that he "believed" the agreement had been signed.

¶ 33 The court rejected the argument, again noting that parties cannot raise new theories for the first time in a motion to reconsider. Further, it rejected the argument on the merits, stating: "Hutson's reliance on [the financial agreement] actually supports the conclusion that there was no express written contract[,] because the agreement that was customarily signed by parents was not signed by [Hutson]." Further, the court did not think that Ori's "belief" that Hutson had signed the financial agreement weighed in Hutson's favor. The court distinguished between a "belief that an agreement was signed and a specific representation under oath that it was signed, especially in light of [the unsigned financial agreement], which seems to suggest that [the association] intended for [Hutson] to sign a commitment to pay [that Hutson] did not sign."

¶ 34 This appeal followed.

¶ 35 II. ANALYSIS

¶ 36 On appeal, Hutson argues that the trial court erred in denying his motion for a directed finding, because an express written contract prescribing fees for the standard rate existed. Thus, the association had not met the fourth element of a *quantum meruit* action, whether an express contract existed.[1] Hutson again points to the unsigned form financial agreement given to all parents at tryouts, which had his older son's name on it. He also pointed to Ori's testimony that

[1] We note that this argument is a virtual admission that the association could rightfully collect $37,250, if it had pursued a breach-of-contract, rather than *quantum meruit*, action. We view the argument, however, not as an admission, but as a last attempt at arguing that the association did not prove its case. Also, Hutson does not acknowledge the trial court's earlier rejection of this same argument based on his failure to raise it at trial.

he "believed" the agreement had been signed. We must reject Hutson's appeal, because: (1) he failed to preserve this issue for review; (2) he improperly raised a new theory in his motion to reconsider; and, in any event, (3) the new theory is without merit.

¶ 37 The term *quantum meruit* means literally "as much as he deserves" and is an expression that describes the extent of liability on a contract implied by law. *Nardi & Co., Inc. v. Allabastro*, 20 Ill. App. 3d 323, 327 (1974). The liability is predicated on the reasonable value of services performed by the plaintiff and accepted by the defendant, such that it would be unjust for the defendant to retain the services without paying for them. *Id*. Again, the four elements of a *quantum meruit* claim are: (1) services were performed for the benefit of the defendant; (2) the services were not gratuitous; (3) the defendant accepted the services; and (4) no express contract existed to prescribe payment of services. *Installco*, 336 Ill. App. 3d at 781. In an express contract, the parties arrive at their agreement by words, either oral or written. *Century 21 Castles by King, Ltd. v. First National Bank of Western Springs*, 170 Ill. App. 3d 544, 548 (1988).

¶ 38 A defendant may move for a directed finding at the close of the plaintiff's case:

> "In all cases tried without a jury, defendant may, at the close of plaintiff's case, move for a finding or judgment in his or her favor. In ruling on the motion the court shall weigh the evidence, considering the credibility of the witnesses and the weight and quality of the evidence. If the ruling on the motion is favorable to the defendant, a judgment dismissing the action shall be entered. *If the ruling on the motion is adverse to the defendant, the defendant may proceed to adduce evidence in support of his or her defense, in which event the motion is waived*." (Emphasis added.) 735 ILCS 5/2-1110 (West 2016).

¶ 39 In ruling on a section 2-1110 motion, the trial court engages in a two-part analysis. *Illinois Heath Care Ass'n v. Wright*, 268 Ill. App. 3d 988, 994 (1994). First, the court must determine whether the plaintiff established a *prima facie* case, meaning that the plaintiff presented some evidence on every element of the cause of action. *Id*. If the plaintiff has not established a *prima facie* case, then the court should direct a finding in favor of the defendant. *Id*. If the plaintiff has established a *prima facie* case, the court proceeds to the second step of the analysis. *Id*. There, it assesses the credibility of the witnesses and generally considers the weight and quality of all the evidence to that point in the proceedings. *Id*. If, after weighing the evidence, the plaintiff's *prima facie* case survives, then the court should deny the motion and proceed as if it had never been made. *Kokinis v. Kotrich*, 81 Ill. 2d 151, 155 (1980). We review the first step *de novo*. *Baker v. Jewel Food Stores, Inc*., 355 Ill. App. 3d 62, 66-67 (2005). We review the second step under the manifest-weight standard. *Id*.

¶ 40 However, section 2-1110 expressly provides that, if a defendant proceeds to adduce evidence in support of his or her defense after having his motion for a directed finding denied, the motion is waived. 735 ILCS 5/2-1110 (West 2016); *Fear v. Smith*, 184 Ill. App. 3d 51, 55 (1989). On this point, the "statute is clear, unambiguous, and contains no exceptions." *Fear*, 184 Ill. App. 3d at 55. If a defendant wishes to preserve for appeal his or her claim that the trial court should not have denied his or her motion for a directed finding, he or she cannot present evidence in defense of that claim. *Rolando v. Pence*, 331 Ill. App. 3d 40, 44-45 (2002) (the defendants preserved for appeal their claim that the trial court should not have denied their motion for a directed finding on the plaintiff's fraudulent misrepresentation claim, because, after the court denied their motion, the defendants presented evidence in defense of only the plaintiff's fraudulent concealment claim); see also *North Spaulding Condominium Ass'n v. Cavanaugh*,

2017 IL App (1st) 160870, ¶ 11 (denial of a section 2-1110 judgment reviewed where the defendant waived its case-in-chief); but see *Vician v. Vician*, 2016 IL App (2d) 160022, ¶¶ 34-38 (denial of a section 2-1110 judgment reviewed on the issue of the requisite elements of the cause of action, even after the defendant presented evidence, though the propriety of engaging in the review was not discussed).

¶ 41 Here, Hutson failed to preserve for review the denial of his motion for a directed finding, because he chose to present a defense against the association's *quantum meruit* claim. Although the association does not raise this threshold issue, we may affirm on any basis supported by the record. *Geisler v. Everest National Insurance Co.*, 2012 IL App (1st) 103834, ¶ 62.

¶ 42 Even if permitted, Hutson's appellate strategy to take aim at the court's preliminary evaluation of the evidence seems curious. Ordinarily, a defendant's evidence should weaken the plaintiff's case. Hutson's strategy seems less curious, however, when we consider that Hutson explicitly conceded the fourth element during his presentation of the case. In closing, his attorney stated: "I understand there was no contract."

¶ 43 Hutson's appeal also fails, because a litigant cannot raise a new theory after trial. Generally, issues cannot be raised for the first time in a motion to reconsider, and issues raised for the first time in a motion to reconsider cannot be raised on appeal. *Caywood v. Gossett*, 382 Ill. App. 3d 124, 134 (2008). A trial court has the discretion to address new issues presented for the first time in a motion to reconsider when the movant provides a reasonable explanation for why the new issue not raised at the trial. *Kopley Group V., L.P. v. Sheridan Edgewater Properties, Ltd.*, 376 Ill. App. 3d 1006, 1022 (2007).

¶ 44 Here, the trial court stated that Hutson "offer[ed] no explanation for his failure to raise the argument at trial that he is bound to pay by an express written contract and so he should not

be required to pay in *quantum meruit*." In reality, the likely explanation is that the argument that Hutson was bound to pay by an express written contract was mutually exclusive to the theory he chose to raise at trial: participation was a gratuitous service. This is not a reasonable explanation. As such, the trial court rightfully declined to entertain the new argument.

¶ 45 Finally, the trial court reasonably rejected Hutson's argument on the merits. Hutson cannot rely on an unsigned financial agreement as support for the existence of an express contract for fees. Hutson used the same evidence to argue the opposite at trial, where he urged that he never signed the financial agreement, and, therefore, the services were provided gratuitously.

¶ 46 Until Hutson raised this alternate theory in his motion to reconsider, he had consistently maintained that he understood that his boys would skate for free in exchange for services that he provided to the association. First, he pointed to directorship services and, with new counsel, to coaching services. The court did, however, find Ori credible in his statements that Hutson repeatedly asked for more time to make the payments, thereby acknowledging that payment was required. This finding was not against the manifest weight of the evidence.

¶ 47 III. CONCLUSION

¶ 48 For the reasons stated, we affirm the trial court's judgment.

¶ 49 Affirmed.