2013 IL App (3d) 120666-U

Order filed August 6, 2013

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2013

ADAM HOUSEWRIGHT,	)	Appeal from the Circuit Court
	)	of the 9th Judicial Circuit,
Plaintiff-Appellant	)	Knox County, Illinois,
Cross-Appellee,	)	
	)	Appeal No. 3-12-0666
v.	)	Circuit No. 11-CH-62
	)	
KYLEE VINYARD,	)	
	)	Honorable
Defendant-Appellee	)	Scott Shipplett,
Cross-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE WRIGHT delivered the judgment of the court.
Justices Holdridge and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in granting a directed finding in favor of Vinyard. We remand the cause to allow Vinyard to present evidence in support of her counterclaim, if so desired.

¶ 2 Following the presentation of plaintiff Adam Housewright's case-in-chief, the trial court granted a directed finding in favor of defendant Kylee Vinyard. On appeal, Housewright argues that the trial court erred by granting Vinyard's motion for a directed finding. Vinyard cross-

appeals, arguing that the trial court abused its discretion by denying her counterclaim without affording her an opportunity to present any evidence in support of her counterclaim. We affirm in part and remand.

¶ 3 FACTS

¶ 4 On April 25, 2011, Housewright filed a three-count complaint seeking to enforce a mechanics lien and also requesting other relief based on *quantum meruit* due to the property owner's breach of an implied agreement. The mechanics lien, attached to the complaint, was dated March 2, 2011, and indicated Housewright provided $18,585 worth of labor and materials to remodel and repair Vinyard's home from December 4, 2010, until January 15, 2011. On November 29, 2011, Housewright amended the complaint to add count IV, alleging a gift in contemplation of marriage.

¶ 5 On May 26, 2011, Vinyard filed an answer and affirmative defense alleging a contract did not exist between the parties and each party voluntarily undertook to remodel the property in their spare time. Vinyard also filed a two-count counterclaim alleging fraud. Count I alleged Housewright committed consumer fraud by failing to provide Vinyard with a written contract and consumer rights brochure as required by the Home Repair and Remodeling Act. See 815 ILCS 513/15, 20 (West 2010). Count II alleged constructive fraud due to the absence of a contract or agreement to support the mechanics lien.

¶ 6 On March 16, 2012, the case proceeded to a bench trial. The evidence established Vinyard and Housewright became engaged during the summer of 2008. Shortly thereafter, the couple called off the marriage in the fall of 2008 and Vinyard returned the engagement ring to Housewright. After a few months apart, Housewright and Vinyard rekindled their relationship.

¶ 7 In December 2008 or January 2009, Housewright learned that his friend was selling a house located at 410 Knox Road, Abingdon, Illinois (hereinafter 410 Knox Road). In early January 2009, Housewright made a verbal offer to purchase the house before learning Vinyard was eligible to receive the $8,000 first time home buyer tax credit if 410 Knox Road was purchased in only her name.

¶ 8 In the late spring of 2009, the couple moved into 410 Knox Road and sought financing for the purchase. The parties agreed to purchase the home in Vinyard's name for $111,000, live together in the home, and divide the bills. The closing on the house took place in August 2009. Housewright paid $2,125 of the $3,885 down payment. Housewright signed a "gift letter" indicating Vinyard would not have to repay the amount paid for the down payment.

¶ 9 The house was titled in Vinyard's name, and she received the $8,000 first time home buyer's tax credit. From August 2009 until the sale of the house, Housewright paid half of the monthly mortgage payment and the couple split the utility bills, pursuant to their agreement.

¶ 10 Before the closing, the couple completed several projects on the home, including: removing mold and renovating the basement, repairing a rock retaining wall, re-graveling the driveway, adding insulation, replacing the siding, and building a new deck on the front of the home. Housewright and a friend connected the central air conditioning unit. Together, the couple painted the back deck and some interior rooms. Additionally, Housewright rewired the basement without Vinyard's assistance.

¶ 11 After the closing in 2009, Vinyard testified the benefit from the $8,000 tax credit enabled the couple to pay for the repairs to the home. Housewright testified that Vinyard received a $3,000 insurance check from the seller to pay for the roof repairs. The court received multiple

receipts as evidence of the materials purchased for the various remodeling projects. The receipts listed Housewright as the customer because he placed the order, but Vinyard's credit card was used for payment.

¶ 12 In April or May 2010, Housewright and Vinyard became engaged for a second time. Housewright gave Vinyard a new engagement ring, and the couple set a wedding date of May 15, 2011.

¶ 13 In November 2010, Housewright's parents gave the couple a wood-burning furnace as an early wedding present. The furnace was installed by December 2010. Housewright stated that the couple did so much work on the house because they intended to live in it after their marriage.

¶ 14 In January 2011, the couple decided that their relationship was over, moved out of 410 Knox Road, and jointly listed the home for sale. Housewright paid for the internet sale listing and handled the sales negotiations. The couple did not discuss how the profit from the sale of the house would be divided, but Vinyard testified she intended to give Housewright a "sum of money" following the sale.

¶ 15 While the property was on the market, Housewright did some work on the kitchen ceiling and hired a contractor to finish the plaster work. The house eventually sold for $144,000. Before the sale was completed, Housewright's mechanics lien attached to the property, and $18,585 was placed in escrow. Following the sale, Vinyard repaid the $8,000 first time home buyer's tax credit. Vinyard testified that the net profit from the sale was approximately $3,000.

¶ 16 At trial, Housewright testified that he was not self-employed but currently worked as a project superintendent for a commercial bridge construction company and previously did some residential construction in high school. Housewright did not possess a roofing or electrical

license or operate his own home remodeling business.

¶ 17 Housewright stated the couple did not discuss whether he would be repaid for his work to the home at the time he did the work, but the parties decided that after they bought the house, they would split the money if their relationship ended. During Housewright's cross-examination, he stated he did not have a written contract with Vinyard and they did not discuss his labor rate. Instead, he calculated his labor rate for the mechanics lien based on the skill he thought was required to complete the various projects

¶ 18 At the end of Housewright's case-in-chief, the trial court granted Vinyard's motion for a directed finding. The court found Housewright's contributions of labor constituted a gift at the time Housewright performed the labor at issue. The court observed that typically a ring is a gift in contemplation of marriage and can be easily returned if the condition of marriage does not take place. However, the court found the labor and materials became a fixture of the realty, becoming so commingled with the physical building that it could not be separately identified and returned. The court concluded that Housewright was not entitled to "anything" because the work and materials were all gifts and the mechanics lien was "right on the edge of frivolous[.]" Nevertheless, it noted that Housewright had made at least a "reaching argument" for a gift in contemplation of marriage. Without that argument, the court might have entertained "rules *** making [Housewright] pay [Vinyard's] attorney fees for a frivolous action[.]"

¶ 19 On June 4, 2012, Housewright filed a motion to reconsider the directed finding in favor of Vinyard. Vinyard's response included a motion for sanctions pursuant to Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994). The court denied Housewright's motion and did not enter an order for sanctions. However, the court reiterated that the case was "on the absolute edge of a

frivolous suit." Housewright appeals. Vinyard cross appeals.

¶ 20 ANALYSIS

¶ 21 I. Housewright's Appeal

¶ 22 On appeal, Housewright argues that the trial court erred in granting Vinyard's motion for a directed finding. First, Housewright contends that the trial court did not follow the two-prong analysis laid out by our supreme court in *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264 (2003), and section 2-1110 of the Code of Civil Procedure (735 ILCS 5/2-1110 (West 2010)). Alternatively, Housewright argues that the court's ruling was against the manifest weight of the evidence.

¶ 23 A. Two-Prong Analysis

¶ 24 In *Sherman*, our supreme court stated that, in ruling on a motion for directed finding, a court must engage in a two-prong analysis. *Sherman*, 203 Ill. 2d 264. First, the court must determine, as a matter of law, whether the plaintiff has presented a *prima facie* case. "A plaintiff establishes a *prima facie* case by proffering at least 'some evidence on every element essential to the [plaintiff's underlying] cause of action.' " *Id.* (quoting *Kokinis v. Kotrich*, 81 Ill. 2d 151, 154 (1980)). The determination that a plaintiff has failed to present a *prima facie* case is a question of law, which we review *de novo*. *Sherman*, 203 Ill. 2d 264. Secondly, if the court determines that the plaintiff has presented a *prima facie* case, it must then consider the totality of the evidence presented, including any evidence which is favorable to the defendant. *Id.* We will not reverse a trial court's ruling on the totality of the evidence unless it is contrary to the manifest weight of the evidence. *Id.*

¶ 25 Here, the record indicates that the court properly employed the two-prong review

described in *Sherman*. In its ruling, the court first determined that there was not a basis in existing law for Housewright's gift in contemplation of marriage claim. The court then found that there was no evidence to support Housewright's mechanics lien. Therefore, the court implicitly examined the legal bases and determined that Housewright had not proven a *prima facie* case. Without the *prima facie* case, the court need not address the second prong of the inquiry.

¶ 26 B. Gift in Contemplation of Marriage

¶ 27 Housewright argues that he made a *prima facie* case that the labor and materials he provided for the repairs on 410 Knox Road constituted gifts in contemplation of marriage. Housewright contends that, because the parties' marriage was called off, the condition for the gifts was not satisfied, and he is entitled to a return of the gifts.

¶ 28 " 'A gift is a voluntary gratuitous transfer of property from donor to donee where the donor manifests an intent to make such a gift and absolutely and irrevocably delivers the property to the donee.' " *In re Marriage of Didier*, 318 Ill. App. 3d 253, 259 (2000) (quoting *In re Estate of Poliquin*, 247 Ill. App. 3d 112, 115 (1993); *In re Marriage of Agazim*, 147 Ill. App. 3d 646 (1986)). Generally, a gift given in contemplation of marriage is conditioned on the subsequent marriage of the parties. *Carroll v. Curry*, 392 Ill. App. 3d 511 (2009). The party who fails to perform on the condition of the gift has no right to property acquired under such pretenses. *Harris v. Davis*, 139 Ill. App. 3d 1046 (1986).

¶ 29 Although Housewright testified that the parties discussed marriage after they rekindled their relationship, it was not until spring 2010 that Housewright proposed to Vinyard with a new engagement ring. The testimonial evidence indicated that many of the projects, including the

roof repairs, basement remodel, air conditioner installation, and front deck construction occurred between June 2009 and April 2010. Thus, Housewright failed to establish a *prima facie* case for a gift in contemplation of marriage of any labor completed or materials provided for renovations on 410 Knox Road before the parties' latest spring 2010 engagement. Consequently, the trial court's conclusion that many of the projects for which Housewright provided labor or supplies were ordinary gifts was supported by the record.

¶ 30 Secondly, to the extent that the remaining projects were completed after the parties' 2010 engagement, the improvement projects could not be severed from the real estate. See *Nokomis Quarry Co. v. Dietl*, 333 Ill. App. 3d 480 (2002) (a fixture is real property that is incorporated into or attached to the realty). Here, the purported gifts were attached to the house and intended to permanently improve the real estate and could not be easily returned to the donor as a result of a failed engagement.

¶ 31 Illinois case law has generally limited the return of property for a failed gift in contemplation of marriage to gifts of personal property. See *Carroll*, 392 Ill. App. 3d 511 (donor was entitled to return of an engagement ring upon the donee's termination of the engagement); *Vann v. Vehrs*, 260 Ill. App. 3d 648 (1994) (donor entitled to return of engagement ring upon mutual agreement to end the parties' engagement); *Harris*, 139 Ill. App. 3d 1046 (where donee broke the engagement, she had no right to retain or dispose of the ring given by donor); *Urbanus v. Burns*, 300 Ill. App. 207 (1939) (donor is not entitled to a return of jewelry given in contemplation of marriage where the donee died while the parties were still engaged).

¶ 32 Finally, we are not wholly persuaded that the improvements made to 410 Knox Road were gifts. The testimony established that the parties both lived in the house, shared expenses,

and worked together on some of the projects. To make a valid *inter vivos* gift, the donor must intend to deliver and the donee intend to accept title to the gift, "whereupon all right to possession, use and disposal of the subject passes to the donee." *Adams v. Hoshauer*, 29 Ill. App. 2d 2, 10 (1961). Here, Housewright and Vinyard provided labor and materials for their *common* benefit supporting the court's conclusion that Housewright did not intend to make a provisional gift of labor and materials contingent on the promise of marriage alone. It appears from the record the couple engaged in a joint endeavor to remodel the home they shared, as part of their ongoing relationship, regardless of whether this relationship ended in marriage.

¶ 33 We conclude the trial court did not err when it granted a directed finding for Vinyard regarding the gift in contemplation of marriage claim.

¶ 34 C. Mechanics Lien

¶ 35 Next, Housewright argues in the alternative that the trial court erred in granting a directed finding on his mechanics lien claim. Housewright contends that he worked on 410 Knox Road under an implied contract and should be compensated for his effort based on a theory of *quantum meruit.*

¶ 36 There are various prerequisites to successfully recover on a mechanics lien claim. Importantly, at a minimum, there must be a valid contract with the owner of the property for services or materials resulting in a debt to the contractor for completed work according to the contract. *Tefco Construction Co., Inc. v. Continental Community Bank & Trust Co.*, 357 Ill. App. 3d 714 (2005); *Cox v. Keiser*, 15 Ill. App. 432 (1884). In the instant case, Housewright did not present evidence of a valid contract between the parties. Housewright's *quantum meruit* claim is an equitable remedy based on a quasi-contract whereby the measure of recovery is the

reasonable value of the work and material provided. *Hayes Mechanical, Inc. v. First Industrial, L.P.*, 351 Ill. App. 3d 1 (2004). Therefore, the trial court properly allowed Vinyard's motion for a directed finding with respect to the mechanics lien.

¶ 37 Moreover, Housewright did not establish the elements necessary for recovery under a theory of unjust enrichment, in the absence of a formal contractual agreement. Under the theory of *quantum meruit,* when a person receives a benefit from another, in spite of the absence of a written contract, the person benefitted becomes responsible for payment:

> " '[O]nly if the circumstances of its receipt or retention are such that, as between the two persons, it is unjust for him to retain it. The mere fact that a person benefits another is not of itself sufficient to require the other to make restitution therefor.' " *Rutledge v. Housing Authority of the City of East St. Louis*, 88 Ill. App. 3d 1064, 1069 (1980) (quoting Restatement of Restitution § 1, Comment c (1937)).

A party can establish a claim for *quantum meruit* through evidence of actual expenditures on labor, including time sheets and testimony, as to actual labor used and amounts paid for materials. *BRL Carpenters, Ltd. v. American National Bank & Trust Co.*, 126 Ill. App. 3d 137 (1984). However, "[p]roof of a bill for a particular amount, without more, is not evidence of the value of services rendered or materials furnished." *Keno & Sons Construction Co. v. La Salle National Bank*, 214 Ill. App. 3d 310, 312 (1991). Absent a detailed breakdown of costs, there is no way to determine the extent of recovery to which the claimant is entitled. *Id.*

¶ 38 Here, Housewright failed to support his *quantum meruit* claim with specific evidence of actual expenditures. Housewright did not provide evidence to the trial court concerning his hourly rate or the amount of time he spent on each project. Given the lack of specific evidence to

support Housewright's *quantum meruit* claim, the trial court did not err in granting a directed finding for Vinyard.

¶ 39 II. Vinyard's Cross-Appeal

¶ 40 A. Counterclaim

¶ 41 In her cross-appeal, Vinyard argues that the trial court abused its discretion by ruling on her counterclaim, without allowing her to present evidence, after the court granted a directed finding in her favor. We agree.

¶ 42 We review the trial court's decision ruling on Vinyard's counterclaim without allowing her to present evidence for an abuse of discretion. *Oh Boy Grocers v. Southeast Food & Liquor, Inc.*, 79 Ill. App. 3d 252 (1979). In *Oh Boy Grocers*, the First District remanded the cause to the trial court after it failed to allow the presentation of evidence on plaintiff's counterclaims. *Id.* The court held that none of the evidence presented by either side related to the counterclaim, and the trial court's refusal to permit evidence relating to the issue resulted in a substantial injustice to the counterplaintiff, who was precluded from having his day in court. *Id.*

¶ 43 In the instant case, the trial court denied the counterclaim before Vinyard presented any evidence or argument in support of her counterclaim. Therefore, we remand the cause to allow Vinyard to withdraw or go forward on her counterclaim.

¶ 44 B. Sanctions

¶ 45 Vinyard argues that the trial court abused its discretion when it refused to enter an order sanctioning Housewright for filing a frivolous suit pursuant to Illinois Supreme Court Rule 137. Ill. S. Ct. R. 137 (eff. Feb. 1, 1994). We review a trial court's order granting or denying sanctions under the abuse of discretion standard. *Commonwealth Edison Co. v. Munizzo*, 2013 IL App (3d)

120153. A trial court abuses its discretion when its " 'ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.' " *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009) (quoting *People v. Hall*, 195 Ill. 2d 1, 20 (2000)).

Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994) provides, in relevant part:

> "If a pleading, motion, or other document is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction[.]"

In support of her motion for sanctions, Vinyard argued that the underlying litigation was filed in bad faith. She alleged Housewright's motion for summary judgment contained no citation to the record, and the case was brought merely to harass, delay or impose unnecessary litigation costs on Vinyard.

¶ 46 On appeal, Vinyard states that the trial court abused its discretion because it recognized the suit was "on the absolute edge of a frivolous suit" and yet did not award sanctions. However, the trial court found Housewright may have had a “reaching argument” on the basis of a gift in contemplation of marriage. Based on this finding, we affirm the trial court’s decision to deny Vinyard’s request for sanctions.

¶ 47 CONCLUSION

¶ 48 For the foregoing reasons, the judgment of the circuit court of Knox County is affirmed in part, and the cause is remanded.

¶ 49 Affirmed in part and remanded.