

**NOTICE**

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2014 IL App (4th) 131076-U

NO. 4-13-1076

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

June 26, 2014

Carla Bender

4<sup>th</sup> District Appellate

Court, IL

ALBERTA VAN HOOK,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	McLean County
TERI QUINN and DAVID HALL,	)	No. 13AR305
Defendants-Appellees.	)	
	)	Honorable
	)	Michael L. Stroh,
	)	Judge Presiding.

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JUSTICE POPE delivered the judgment of the court.

Presiding Justice Appleton and Justice Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not err in dismissing plaintiff's claim, as the statute of frauds bars plaintiff's claim and promissory estoppel is insufficient to trump the statute's application as an affirmative defense.

¶ 2 On July 11, 2013, plaintiff, Alberta Van Hook, filed a *pro se* complaint against defendants, Teri Quinn and David Hall, claiming they owed her \$30,000 for expenses she incurred caring for their father. Defendants filed a motion to dismiss, arguing plaintiff's claim was barred by the statute of frauds, as it was based on an oral promise to pay the debts of another. Plaintiff filed a response arguing that the statute of frauds does not apply and the oral promise is enforceable under the theory of promissory estoppel. The trial court dismissed plaintiff's complaint.

¶ 3 On appeal, plaintiff argues the statute of frauds does not apply and, even if it did, the trial court should have granted her recovery based on promissory estoppel, which she claims is not subject to the statute of frauds. Defendants argue the statute of frauds bars plaintiff's claim and plaintiff cannot recover on a promissory estoppel theory. We affirm.

¶ 4 I. BACKGROUND

¶ 5 On July 11, 2013, plaintiff filed a *pro se* claim against defendants, claiming defendants owed her \$30,000 for expenses she incurred caring for Virgil I. Hall, her brother and defendants' father. Plaintiff alleged she incurred expenses related to Hall's care from the time he was seriously injured in an automobile accident until his death and she acted in reliance on defendants' promise to repay her for the expenses. Plaintiff's complaint does not state when defendants allegedly promised to repay Hall's expenses. Plaintiff also does not specify the expenses she allegedly incurred, except that she describes them as "out-of-pocket expenses" in her motion for reconsideration and claims they total \$30,000.

¶ 6 On August 16, 2013, defendants filed a motion to dismiss, claiming plaintiff's claim was barred by the statute of limitations and the statute of frauds. Defendant, David Hall, filed an affidavit stating, "On February 17, 2002, Virgil I. Hall was severally [*sic*] injured in a[n] auto mobile accident in McLean County, IL. On January 26, 2006, Virgil Hall passed away and an Estate was opened in McLean County, Case No. 2006-P-66."

¶ 7 On August 23, 2013, plaintiff responded to defendants' motion to dismiss, arguing the statute of limitations did not begin to run until "some years after [Hall's] death," as the parties had a vague understanding the defendants would reimburse her when the probate proceedings concluded. Plaintiff also argued she was entitled to relief based on promissory estoppel, which she claimed applied notwithstanding the statute of frauds. In support of her promissory-estoppel

claim, plaintiff stated "defendants promised to pay expenses plaintiff incurred; acting in reasonable reliance on [the] promise, plaintiff incurred expenses; and now defendants have refused to perform as they promised."

¶ 8 On October 4, 2013, plaintiff filed what appears to be a second response to defendants' motion to dismiss. In this pleading, plaintiff asserted she used her inheritance from her mother to care for defendants' father. Plaintiff stated in part: "[defendants] settled [the estate] and gave me nothing. I feel I should have been the first to receive any money[.] I was with him most of the time—beginning to end. I have never received any money at all."

¶ 9 On October 4, 2013, the trial court dismissed plaintiff's action as barred by the statute of frauds. On October 15, 2013, plaintiff filed a motion for reconsideration, which the court denied at the November 8, 2013, hearing on the motion. The court found as follows:

"the claim of promissory estoppel as put forth by [plaintiff] is not a bar to the effect of statute of frauds. \*\*\* [O]nly a claim of equitable estoppel may bar the effect of [the] [s]tatute of [f]rauds. No such claim has been made here. This was [a] claim for [services] provided to [plaintiff's] brother Virgil [before] he died. In effect, this is a claim against the estate. As such, the statute of frauds applies to any promise made for the debt of another. [Because plaintiff] has not claimed equitable estoppel [and because] other avenues of relief [such as] a claim against the estate were available the cause must be dismissed [with] prejudice under [section] 2-619."

This appeal followed.

¶ 10

## II. ANALYSIS

¶ 11

Preliminarily, we note both parties' briefs point to facts not found in the record. However, "[a] party may generally not rely on matters outside the record to support its position on appeal." *Keener v. City of Herrin*, 235 Ill. 2d 338, 346, 919 N.E.2d 913, 918 (2009). We disregard those factual assertions not supported by record.

¶ 12

### A. Standard of Review

¶ 13

A motion to dismiss under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619) (West 2012)) "admits the legal sufficiency of the plaintiffs' complaint, but asserts an affirmative defense or other matter that avoids or defeats the plaintiffs' claim." *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59, 857 N.E.2d 229, 236 (2006). "Section 2-619 motions present a question of law, and we review rulings thereon *de novo*." *Id.* Here, as the trial court granted defendants' motion to dismiss under section 2-619, we apply *de novo* review.

¶ 14

### B. Statute of Frauds

¶ 15

Plaintiff argues the statute of frauds does not apply to her claim, as defendants did not promise to pay the debts of another because the promise "was made by these defendants to plaintiff." We disagree.

¶ 16

Under the statute of frauds, "[n]o action shall be brought, \*\*\* to charge the defendant upon any special promise to answer for the debt, default or miscarriage of another person, \*\*\* unless the promise or agreement upon which such action shall be brought [is] in writing \*\*\*." 740 ILCS 80/1 (West 2012). Plaintiff claims the debt was incurred by defendants because defendants, not Hall, promised to pay Hall's expenses. However, promises to pay debts incurred by another person are exactly the kind of promises covered by the statute of frauds. Regardless of defendants' alleged promise, plaintiff presumably could have filed a claim against

Hall's estate for repayment, as plaintiff claims the expenses she incurred were exclusively for Hall's care. The trial court properly found plaintiff's claim is, in effect, a claim against Hall's estate. We note plaintiff does not claim the estate was closed without notice. Because plaintiff attempts to hold defendants to an oral promise to pay debts allegedly owed by Hall's estate, the statute of frauds applies to plaintiff's claim.

¶ 17 C. Promissory Estoppel

¶ 18 Plaintiff also argues, notwithstanding the statute of frauds, she can recover based on promissory estoppel. Defendants argue promissory estoppel does not overcome the application of the statute of frauds as a complete defense and, even if it could, plaintiff's promissory-estoppel theory must fail because other methods of relief existed, such as a claim against Hall's estate. We agree promissory estoppel does not trump defendants' assertion of the statute-of-frauds defense. Because pleading promissory estoppel is never sufficient to overcome a statute-of-frauds defense, we need not address the merits of plaintiff's promissory-estoppel claim.

¶ 19 Illinois courts have long held a party cannot plead promissory estoppel to overcome the application of the statute of frauds as a defense. *Ozier v. Haines*, 411 Ill. 160, 165, 103 N.E.2d 485, 488 (1952); see also *Ceres Illinois, Inc. v. Illinois Scrap Processing, Inc.*, 114 Ill. 2d 133, 148, 500 N.E.2d 1, 7 (1986) and *McInerney v. Charter Golf, Inc.*, 176 Ill. 2d 482, 492, 680 N.E.2d 1347, 1352 (1997) (reaffirming the *Ozier* decision). In *Ozier*, the Illinois Supreme Court stated, "in cases involving oral contracts the estoppel must be based on misrepresentation or concealment if the Statute of Frauds is to be given effect at all." *Ozier*, 411 Ill. 160, 103 N.E.2d at 488. Rather, "in order to trump the Statute of Frauds, a party must invoke the doctrine of equitable estoppel, which differs from promissory estoppel in that the party

asserting it must additionally allege words or conduct amounting to a misrepresentation or concealment of material facts." *Cohn v. Checker Motors Corp.*, 233 Ill. App. 3d 839, 845, 599 N.E.2d 1112, 1117 (1992). Here, plaintiff did not plead equitable estoppel and has not alleged any of defendants' actions amounted to fraud or misrepresentation. Therefore, defendants are not estopped from asserting the statute of frauds as a defense.

¶ 21 III. CONCLUSION

¶ 23 Affirmed.